

*The Censure and Approbation of the most Illustrious and
most Reverend Thomas Dece, Doctor of Divinity
of the university of Paris, and Lord
Bishop of Meath.*

Hib. 7. 648. 9

I The undersigned, having seriously perused, and exactly examined the Answerers made to the Queres by the Right Reverend Father in God, David Lord Bishop of Ossory, and by the Deputies, thereunto subscribing, doe esteeme the same worthy to be published in Print, to the view of the world, as containing nothing, either against God, or against Caesar, but rather, as I conceive, the Answerers in the first place, doe prove home, and evidently convincy, the excommunication, and other censures of the Lord Nuncio, &c. to have beene groundlesse, and very much of their own nature, and before the appeal, and besides doe manifestly convincy, that in case the Censures had not beene such of their own nature, yet the appeal interposed sustends them wholly with their effects consequences, and jurisdiction, of the Judge, or Judges &c. And withall doe solidly, and learnedly, vindicate from all blame the fidelitie, integrity, and prudence of the supreme Councell, in all their proceedings, concerning the Cessation, made with the Lord Barrow of Inchiquin, notwithstanding the daily increasing obloquies, and calumnies of these malignant opposers. In the second place, the Answerers doe manifestly instruct the scrupulous, and ignorant people, exhorting them to continue, in their obedience to supreme Authority: as they doe, in like manner instruct and convince efficaciously, the oppositors of such obliques, and factitious persons, as doe presume to wilfully, and treach underfoot, the authoritie established, in the Kingdoms, by the Assembly of the Councils Catholiques. And finally the Answerers dutifully, and loyally, doe invite all true hearted Subjects to give all due obedience to their soveraigne, and to any other Supream Civil Magistrate, subordinate, and representing the Soveraigne supreme authoritie, according the Law of God, the Law of the Church, and the Law of the Land.

Given at Kilkenny the
17 of, Aug. 1648.

Thomas Medensis

An other Approbation.

By the perusal of this Treatise intitled Queres and Answer, I am induced, to concurre with other eminent Surveyors thereof, That it contains nothing contrary to approved doctrine, sound Faith, or good manners, and therefore that behooffull use may be made thereof, by such as love truth and sincerity. 7. August. 1648.

Thomas Roche Deane of St. Canice
And Protonotary Apostolic &c.

Having perused by Order of the Supreme Councell, the Queres propounded by the Supreme Councell, &c. with answers given them by the Right Reverend D AVID, Lord Bishop of Ossory, and other Divines, and being required to deliver my sence of this worke, I doe signifie That I finde nothing in the said Queres or Answers against Catholicke Religion, good life or manners, but much for their advancement, and great lights for the discoverie of Truth: I finde by evident proofes declared, that the Councell in this affaire of Cessation, appeals interposed against, and other proceedings had With the Lord Nuncio, and his adherents, carried themselves with a due resentment of the generall destruction of the Kingdome, and with a true and knowing zeale of loyaltie for maintenance of the Catholicke Religion, Justice, lawfull authoritie, the lives, estates, and rights of the Confederats: I finde by uncontroll-able reasons proved, that the Confederats cannot without worldly ignomie, and divine indignation fall from the said Cessation, while the conditions are performed, and time unexpired: I finde lastly hence, and by other irrefragable arguments, that all and every of the Censures pronounced either by the Nuncio, or any else against the Councell, or other Confederats upon this ground of concluding, or adhering to the Cessation, are unreasonable, unconscionable, invalid, voyde, and against Divine and Humane Lawes of Nature, Scripture, Nations, and Canons of holy Church, This is the sence of

Kilkenny the 4. of August 1648

James Talbot
Doctor of Divinitie

The Approbation of the Fathers of the
Societie of Iesus

The ensuing Answers to the Queres, being learnedly, and laboriously performed, replenished with varietie of both Morall and Divine Doctrine, as the many Author, Canons, and places of holy Scripture therein cited, doe abundantly manifest, containing nothing contrarie to Catholicke Faith, and Religion, we iudge most Worthy to be published as an efficacious meane to remove scruples, to satisfie each one, and to settle the consciences of all sorts.

Henr. Plunket, Superiour of the Soc. of Ies. at Kilkenny.
VVill St. Leger, of the same Society. Robert Bash, of the same Society.
VVill. Dillon, of the Society. Christopher Maurice of the same Society.
John Vsher, of the same Society.

An other Approbation.

By Order from the Supream Counsell, I have perused these Quæres with their answers, and doe finde nothing contrary to the Catholike Religion or good manners: nay rather that they containe very solid doctrine, well grounded upon the Holy Scriptures and authorised by the Doctors and Fathers of the Church, and are most worthy the press, whereby the world may be satisfied and the most tender Consciences resolved in their great troubles, scruples, and many dangers removed, the which unsatisfied might threaten ruin on a catholick common wealthe.

James Talbot, Professour of Divinity,
Sometime Visitatour of Saint Augustins
Order in Ireland &c.

An other Approbation.

Having perused this booke of Quæres, and Answeres made unto them by the most Rd. Father David Lord Bishop of Ossorie and severall Divines of most Religions and examplar life, and eminent learninge, I see nothing contrary to faith, or good manners: nay rather Iudge is a verie solid, and profitable worke, grounded on the Lawes of Nature, of God, and of Nations, confirmed by Councils, taught and preached by the Holy Doctors, and Fathers of the Church, and most worthy to be printed forthwith, That to the World may appeare, the iust and most conscientious carriadge of the Supream Council, and their adherents (in this Controversy about the Cessation) and the unvarianable and illegall proceedings of the Lord Nuncio, and others of the Clergy and Laity, who for ends repugnant to their Oath of Association, seeme disaffected to the English Government (as it was even in Catholick times) and wholly averse from any Peace, or settlement whereby our dread Sovereigne Lord and King might bee releasued from his present sad condition.

Kilkenny. 12. Aug.

F. Thomas Talbot one of
Her Maiesties Chaplins.

The Approbation of Divines of Saint Francis's Order.

We have diligently read this worke, and seen in all pages and partes thereof Truth enfranchised, Ignorance enlightened, the Councils present proceedings for the Cessation and against the Censures vindicated from iniustice, as the Opposers of their Authority are convinced of sinfull disobedience, and Perjury. Kilkenny the x. of Aug.

Fr: Thomas Babe.
Fr: Ludouick Fitz
Gerrald
F. Paul Synnot.
F. James de la Mare



THE SUPREAME COUNCELS
LETTER TO THE MOST ILLVSTRIOS

And Reverend David Lord Bishop of Ossory, con-
cerning the assembling of Divines, and returning
his, and their result on the Queres.

Finding that to the great hinderance of the Publicke quiet,
and the benefit of the Common-enemie, the Lord Nuncio
hath issued his Excommunication, and thereby, so farre as in him
lay, distracted the Kingdome, and devided the Nation, notwith-
standing that by our appeale presented unto him the fourth of
this Month, his Graces further proceedings, according the Law
are to be suspended. Yet because it concernes the dutie we owe
the Kingdome, to omit nothing that may remove the least scruple
in any of the Confederate Catholicks, by which he might avoyde
the visible breach of his Oath of Association, by declining the au-
thoritie intrusted with us, we have thought fit to let your Lord-
ship know, it is our pleasure, and accordingly we pray your
Lordship, to assemble forthwith all the Secular and Regular Clergie,
and all other the able Divines now in this Citie together before
you, and to get their present result upon the enclosed Propositions,
to be transmitted to us withall speed. VVe know your Lordship
so Zealous a Patriot, and so desirous of settling the Consciences
of such few of your flocke as may happily be yet unsatisfied, as
you will use all possible expedition herein, which is earnestly re-
commenended to your Lordship by

Your Lordships verie loving friends

Arhenry.

Luk. Dillon.

Rich. Belling.

Parr. Brian.

Ioh. VV alsh.

Rob. Duvrenex.

Gerald Fennell.

Kilkenny Castle

14. June 1648.

THE QVERES.

1. **VV** Hether any, and if any, what parte of the Articles of the *Cessation* with the Lord of Inchiquin is against the Catholicke Religion, or iust ground for an Excommunication?

2. Whether you hold the appeale by us made and interposed within the time limited by the Canon law, and apostles being granted therevpon, be a suspension of the Monitorie Excommunication, and Interdict, and of the effects, and consequences thereof, and of any other proceedings or Censures, in pursuance of the same?

3. Considering that the propositions of the Lord Nuncio now printed, were offered by his Lordship as a meane whereby to make the *Cessation* conscionable, whether our answers therevnto, likewise printed, are so short, or unsatisfactory, and wherein, as they might afford iust grounds for an Excommunication?

4. Whether the opposing of the *Cessation* against the positive order of the Councell by one who hath sworn the Oath of Association, be periury?

5. Whether if it shalbe found, that the said Excommunication and Interdict is against the law of the Land, as in Catholicke time it was practised, and which lawes by the Oath of Association all the Prelats of this land are bound to maintaine, can their Lordships (notwith standing and contrary to the positive orders of the Supream Councell to the contrarie) countenance or publish the said Excommunication, or Interdict?

6. Whether a dispensation may be given vnto any person or parties of the Confederats, to breake the Oath of Association without the consent of the Generall Assembly, who framed it, as the bond and ligament of the Catholick Confederacy and union in this Kingdome; the alteration or dissolution whereof being by their orders reserved onely vnto themselves?

7. Whether any person of the Confederats upon pretence of the present proceedings of the Lord Nuncio, may disobey the orders of the Supream Councell?

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Answers



*Answers made to the foresaid Queres, by the most
Reuerend Father in God David Lord Bishop
of Ossory, and by the Divines.*

*The Preface in forme of Letter, directed
to the Right Honourable the
Supreme Councill.*

A Swell in obedience to your Honours Commaunds, as for satisfaction of our Consciences, & guiding Soules committed to our charge, or cleering their scruples, and resolving such from perplexities, who come to us for their spirituall instruction, VVe have seriously considered the Questions delivered us from your Lordships: And having first proposed God before our eyes, with firme resolutions, to have no other judgement of these, or any of them, but what should be wholly and purely conformable to the doctrine of the holy Roman Church, to the inviolable Decrees of sacred Canons, to the common sense of most famous Divines, to the knowne practise

etise of other Catholicke Nations, and to the
 manifest principles of the very law of Nature:
 and after diligent pervsall of all the proce-
 dings past betweene your Lordships and the
 Lord Baron of *Jnchiquyn*, and the Lord *Nun-*
cio and Congregation, from the first day this
 Cessation was intertayned by treaty, untill the
 present; having duely pondered all and each
 of the said Lord *Nuncios* and *Congregations*
 arguments against it, with the satisfaction gi-
 ven them alwayes by your Lordships: & with-
 all after much labour taken by us for severall
 dayes, in turning Divines and Cano-
 nists, and weighing the strongest objections
 eyther made by the Lord *Nuncio* and Con-
 gregation, which indeede, withall submissive
 reverence be it said, are but groundless & too
 too weake suspitions no way proved) or which
 our selves could frame against our selves: wee
 have fixed unanimously and constantly on
 the following answers, without (as VVee call
 God to witnesse) the least scruple of swarving
 from Divinitie, Law, or Reason.

And although VVe are not ignorant how
 the Deane of *Firmo* by authority from the
 Lord *Nuncio* published Commands, Censures
 and penalties against all Divines & Canonists
 who

who should deliver their opiniōs for the *cessa-
tiō* untill, or before they had accoasted his Lord
ship, and Congregation, to heare from them
the reasons which oppose it; yet in regarde it
appeares unto us evidently after mature deli-
beration and exact debate, that such Com-
maunds, Censures, and penalties are not onely
most unreasonable and unjust, but also inva-
lid, since they would take away from us that
just liberty, which throughout all the world, is
of right belonging to, and absolutely requisit
to be resident in Divines, *viz.* to answer Cases
of Conscience occurring or proposed [it be-
ing otherwise impossible for them, eyther to
governe their owne consciences or direct
others, but all should often live in tormen-
ting perplexities; which is repugnant to the
law of God) And since our going to the Lord
Nuncio and Congregation, would be to no
other purpose, then to heare and see his Lord-
ships objections against the *cessation*; all
which we have already, to the least word, per-
vsed in the Bookes given us by your Lord-
ships directions (for there can be no kinde of
likelyhood, that wee should receive from his
Lordship or Congregation, any better or
stronger reasons; then what hee hath given
your

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your Lordships, to whom questionlesse it was
more materiall and for their purpose to give
them, and with whom they laboured somuch
for point of conscience (as they pretended)
to hinder the conclusion of this businesse;
since also there are such considerable difficul-
ties in going to his Lordship, neyther day or
place prefixed for any, that would go; the di-
stance, and dangers of the wayes, being such as
are knowne; and, which is above all, his Lord-
ship residing in a place, and amongst an Ar-
my, which stands in opposition to the Coun-
cell, and seeming to have made himselfe, with
these few Bishops about him, a party to side
with refractories & open enemies to the king-
dome; besides, no safe conduct given, or offe-
red us, and the settling of our owne, and of all
other soules committed to our charge, admit-
ting no delays in so greata difference, and so
neere concerning us: since likewise, it is mani-
festly consequent out of our answers given to
the first, and second *Quere*, that as the Lord
Nuncio's Censures against your Honours, and
your adherents in the principall cause, are of
no force as well by reason of the intollerable
errors, which (with much reverence & due sub-
mission we say), they contayne, as of the ap-
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peale interposed, both which doe joyntly and severally disanull them; so the *Deanes* censures and all others, if there be any else, issued hitherto, or henceforth to be issued against us, or any who should give their opinion for, or approbation to the said Cessation, are for the same reasons throughly invalid, yea should we grant that such persons, as issued them had even in righteous causes a lawfull power over every & each of us; which is yet very questionable: we are therefore so farre from apprehending any unlawfulnessse in delivering freely before the world our opinion in this matter, that in the present circumstances, specially being required by your Lordships, wee conceive it our dutie to the Publicke, and a merit before God; praying heartily to heaven, that the ignorant may finde instruction, the wavering settlement, and the refractories that reproach of their unjust proceedings, which may reclayme them, in these answers of

Our very good Lords

Your most devoted Servants.

David Ossoriens,

And the rest who subscribe to the Answer.

The First Quere answered.

SUPPOSING heere, as a *tenet* vnderstandable by any Catholicke, That the faithfull may without breach of Conscience, conclude and observe Cessations of Armes, yea constant leagues, and peace with infidells, and Hereticks: whereof wee see before our eyes, most Warrantable presidents, even in holy scriptures, & practice of the Saints of God; as that of Abraham *a* with Abimeleck; of Iosua *b* with the Gabbonites; of Samuel with the Ammorhites *d*; of many faithfull kings of Iuda, with the Idolaters of Israel, or Samaritans; & of the valiant Machabees *f* (who in their time were the champions of Religion & approved by God) with the Romanes, Spartians, & some successors of Alexander, to whom they gave donaries, & whose Regallity they acknowledged: whereof also wee haue for so many ages, the examples allowed practice of almost all Christian Catholick Princes *g* & States; of the Emperour of Constantinople & Germany, the Kings of Hungary, Poland, France, the State of Venice, & many other Catholick Princes with the Turks; of the Kings of Spaine *h* with the Moors of Siuill, Granado, Valentia &c; of St. Gregory the great, Pope of Rome with the Arrian Longobards *d*; of Charles the first no lesse mighty then religious Emperour, & of his successors with the Lutherans *k* of Germany, with Henry the 8. excommunicated, & with Denmarke, Holland, Scotland, Sueland, &c; Finally of the most Christian Kings of France with Hugonots: Supposing likewise another vndoubted truth, maintained by all Diuines, who ever yet put pen to paper, as Beacan *m* & Hist. Turc. in aduertised (& conformable to the decrees of 3. Generall Councils) to wit, That tis not lawfull to breake contracts made with, or publick faith giuen to Hereticks, nor to fall from Cessations, or peace concluded with them, while the

(*x*) Vide Bonan. tom. 2. d. 3. p. 2. p. 8. Turrian. de iust. & iur. d. 87. dub. 2. Layman. & Bonan. infra citandos

(*a*) Gen. 21. v. 27.

(*b*) Iosua. 9. v. 9. 15.

(*d*) 1. Reg. 3. v. 15.

(*e*) 4. Reg. 3. & Paralip. 10. v. 3. & 18. 3. & 36.

(*f*) 1. Reg. 23. 29.

(*g*) 1. Machab. 10. v. 6. 44 & 12. 43 & 2. Machab. 11. v. 15. & 14. v. 23. 24. 25.

(*h*) Knoules Turk. hist.

(*i*) Vindicia Gallica.

(*j*) Barron. & Spond. ad an. 1598.

(*k*) Aulgar. Chro. ad an. 1547.

(*l*) Surins ad an. 1567.

(*m*) Beacan in Opuscul.

Theol. de Fide

Har. c. 7. & Lateran. Constant. Trid. apud eundem in Miscellanijs. Idem in sum. Theol. b. cod. tit. quast. 1. 2. 4. 5. Bonac. tom. 2. disp. 3. q. 2. p. 8. 9. 2. Turrian. de iustitia iure. d. 87. dub. 2.

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conditions are performed, and the time unexpired,) ; no, not even in case religion did seeme notably endamaged by their obseruation, as *Molanus* (*n*) and *Layman* expressly hold, and excellently prove hence, That no euill so great can happen religion out of their obseruation as the scandall & consequences would arise out of the contrary position, if it were maintained & practised by Catholickes as true or conscionable; out of which doctrine these great diuines most soundly & religiously infer that even his Holinesse cannot dispense in this straight tye of fidelity:

(*n*) *Layman*. l. 2. tract. 3. ca. 12. con. 4. *Ioan. Mol. de Fid. haereticis* ser. cap. 14

Verba Layma. Dico IV. Si Catholicici cum haereticis publicū fœdus ineant,

non potest per auctoritatem Pontificiam solui, aut relaxari. Hac est doctrina à Ioanne Molano precipue intentā. Probatur: Licet enim, si quadam praeispeccentur, videlicet quod haereticis propter Baptismū, Ecclesiastica iurisdictioni subiecti sunt; & ob id iam ac poenam ipsorum, iure compellantur ad remissionem fœderis in Ecclesia detrimentum cedentis: aut, si recusent, ipsi etiam inuitis relaxatio fieri queat, per supremam Ecclesiasticam potestatem; attamen, spectatis omnibus, adeoque absolute negari debet, id à summo Pontifice fieri posse. Quandoquidem is non habet potestatem dispensandi aut relaxandi in detrimentū Ecclesiæ, talis autem, relaxatio cederet in gravissimum Ecclesiæ detrimentum: quia cum haeretici Catholica Fidei hostes, in omni fœdere cum Catholicis inito exclusam velint Papalem relaxandi potestatem, ideo apud ipsos, & omnes nationes infideles blasphemabitur nomen Domini, & Religio Catholica in contemptum veniet, & plura mala ingentia sequentur, si dicatur, nos cum Pontificis nostri consensu, fœdera publica, contra iugentium, erga hostes nostros violare. Hoc autem tam grave malum est, ut nullum incommodum seu detrimentum Ecclesiæ Catholicae, ex fœderis obseruatione inferendum, ita magnum videri debeat sperantibus in Deo, & Christo summo Ecclesiæ defensore, qui auxilium fert in tempore opportuno.

Verū haeretici huius temporis Calvinista egregie astuti sunt. Vt enim impune ipsis liceat pacta cum Catholicis inita violare, causam prae texunt, quod Iesuita, & alij Catholici doceant, fidem haereticis (quales se esse conscientia ipsis dicat) seruandam esse: talibus autem, qui fidem violare parati sunt, fidem seruari non oportere: cum tamen interim fidem publicam à Catholicis violatam fuisse, nullo exemplo ostendere possint, multo minus, quod Catholici Doctores in ea, quam dicunt, sententia sint, Fidem haereticis seruandam non esse. Ecce enim tam lesiuita, quam alij Doctores Catholici contrarium aperit proferunt ac docent: fidem publicam haereticis datam, inuolabiliter, & sine ulla dispensationis, aut absolutionis remedio seruandam esse, quamdiu ipsi seruare parati sint.

Supposing (we say) both these tenets as they cannot but be uncontroulably admitted, our answer to the first question is, That sithence it is manifest by what is said, how a truce, league or peace with enemies of our faith, is not in it selfe unlawfull, especially where eyther the necessity or profit or advancement of the affaires of true Religion expected thence doe warrant it, and since it is no lesse cleere, how its against conscience to fall

fall, contrary to promise given, from such publicke contracts, or faith engaged, since likewise none of the articles of *Cessation* with the Lord of *Inchiquyn* (cyther in their owne nature, according any common or proper sense the words may have, or taken together with the circumstances of the time & condition the Confederats were in at their conclusion) involves any evill, we must confesse and averre none of the said articles to be against *Catholicke Religion*, or *inst ground for Excommunication*; this just ground implying in it selfe an evill (and a mortall evill (e) or sin) according to the unanimous consent of all Divines, yea an exterior and visible (p) sin, as they teach. And that no such evill lyeth hidden in these articles, or any thing disadvantageous to *Catholicke Religion*, wee are certainly perswaded it may be evident to any that will take away the filme.

First, because there is not a word in them cyther positively (as it is manifest) or negatively (if all the circumstances be considered) against Religion, justice, or good life: and, which is farre more, that by the second and fith, speciall provision is made for the advancement of Faith and *Virtue* throughout all the said Lord of *Inchiquyns* quarters, (a few Garrisones excepted) by free exercise of *Catholicke Religion* and function (yea by possession of Churches and Church livings, where we held them at the comencement of the treaty) in as ample manner as in our owne quarters. VVhich questionlesse is no small advantage to Religion, and which could not be acquired by warre hitherto, though the hazard cost much blood, and many lives to the *Confederats*.

Secondly in regard of the then present great necessity of our affaires: the power of the enemy so encreased in all parts of the Kingdome & particularly in *Monaster*; all ports, besides five or sixe, and maritime places of any consequence in the whole Iland (which are at least twenty) being in their hands; neere two parts of three of the in-land being cyther in their quiet possession or forraged by them, & under contribution; their Armies victorious, their Fleet giving lawes to us at Sea, and shutting up our Havens; two vast Kingdomes, within sixe (or twelve houres sayle, the furthest of) to backe them, to support their charges, and repayre their losses: and on the other side, the *Confederats* fallen to such an ebb, and sad con-

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dition:

(e) *Suar. tom. 1. de Censu. disp. 4. sect. 4. & alij omnes.*

(p) See the Doctors on *Bulla Coena*, where they treat of excommunication against Hereticks. Roads likewise the Divines in their treatises of laws and where they inquire whether interior acts of the minde may be commanded or prohibited, or whether the sins of the heart, as wicked intentions &c. not sufficiently discovered in the exterior, may be punished by holy Church, as with Excommunication or otherwise and they answer negatively. *Layman. l. 1. de leg. tract. 4. cap. 4. assert. 7. cites ibi in great numbers. And indeed the very Canons expressly define the truth, cap. Sicut de Simon. & cap. Tuas nos eodem titul.*

dition: our two most flourishing Armies defeated, and brought to nothing; our quarters over-run by foure severall enemies, burnt, wasted, and for no lesse then a third part of what was ours intirely even last yeare, made now tributary: our owne forces of the *Vlster army* devouring what was left by the common enemy, and in hostile-wise destroying all places which by others were untoucht, and which before this crueltie were able to, and really did support the most considerable proportions of the charges of warre; our *Exchequer* hence both empty, and altogether hopelesse to get in moneys from a countrey so totally exhausted, and so lamentably ruined; our expectations of great summes and helpes from beyond Seas, being turnd to winde, linoake and despayre, for any thing hath yet appeared; or if some little quantitie be come, it being feared, that it should be given for maintayning sides, and supporting factions against the *Government* (as we have seene in effect proved;) no common Granaries for the *Publicke*, and but verie small store of graine with any privat persons, in so great a dearth of corne, as *Ireland* hath not seene in our memorie, and so cruell a famine, which hath already killed thousands of the poorer sort; and therefore no possibilitie to keepe an Armie in the field, though no other want had beene but that of bread, and if enemies were (as hitherto) comming on us from the foure windes; lastly so much dissention, such distance, and such malignant hatred twixt our selves within the body of the *Confederats*, as the wiser sort did (not without cause) conceave to be too ominous, and to weaken us no lesse then could the strongest Armie of our enemies: an ebb so low, and a condition so sad of the *Confederates*, that according humane hopes there was no likelihood without a *Cessation* with some one partie, they might subsist this Summer eyther by a *defensive* warre in all the Provinces, or an *offensive* in one, and a *defensive* in the rest. Yet by the *Cessation* they might be to enabled, that according much probabilitie, *Religion* might be planted this season where *Heresie* is most insolent and powerfull of any place in the Kingdom. For, if that partie of the *Confederats* which now opposeth the *Cessation*, were obedient, & together with the forces of the *Marquesse of Clanrickard* (drawne by this *Cessation* from

from a *Neutral* to a *Confederate*, or at least to a social warre against his *Maiesties* enemies) and of the Lords, *Taffe*, *Prifon*, and *Inchiquyn* (nay should *Inchiquyn* stay at home and give no helpe, but onely forbear annoyng us) should, (we say) the foresaid Lords and forces march against the *Scots* and *Dublin*, who sees not but by the helpe of this *Ceffation*, *Faith* and Religion might in many places be planted this Summer on the ruines of *Herefies*. And hence it is, that

Thirdly it is cleere, The *Ceffation* is so far from disadvantage Religion, as there could hardly be a better way thought of to further it. Whence followeth, that not onely necessitie (which hath bene now declared) but also vilitie or great advantage gotten by it for the Cause doth warrant it; since by the Articles *Inchiquin* himselfe, with his victorious Army, is bound to display these colours for vs, which so many times we groaned to see against vs. More indeed then the nature of a *Ceffation* draweth alonge with it: and (if it be taken together with the former benefit of the second & fift Article, & With the care had, that the Lord of *Inchiquins* Protestant party should not enioye the like benefit or liberty of either their function or Religion in our quarters) more, it is plaine, to the honour & profit of our Faith, then the greatest & most Catholick Kings, & Emperours performed in the like occasions.

Certainly we know, the King of Spaine hath (to pass over the present peace, so longe expected & so much spoken of) almost in our owne memory concluded a truce of twelue yeares with the *Hollanders* (p); & yet no such libertie obtained for the *Catholique Religion* within their quarters. Nay we know, That the most powerful & most vertuous *Charles* the fift, King of Spaine & Emperour of Germanie, though his Kingdomes were so vast, his forces both at sea & land so great, his treasures so inexhaustible, & himselfe so victorious, yet to prouide for the safety of his estate, rather then to hazard too much with the Heretickes of *Germany* (q) was contented, to giue them, by expresse article & acte of Parliament, the free exercise of their Religion & function (even of that Religion which was presented by the Lutherans, & is called *Confessio Augustiana*) throughout all *Germany* (r); by ver-

(p) *Austrianum*
Chron. ad annal.
Barronij, ad an.
1609.

(q) *Idem ad*
an. 1547
& 1552.

(r) *Yes libertie*
of Religion is
the very worst
of evils, most
repugnant to,
& destructive
of Catholick
faith, and of al
ciuil gouerne-
ment, and one
ly out of new

necessitie to be
permitted. Be-
can. in Sum. de
fid. Har. ser. c.
16. q. 4. con.
2. & 3.

(s) Knols in
his Turk. hist.
in Achm. Gaf.
par Landorp.

(1) See at lar-
ge in the Turk.
hist. in Ach-
mas. fol. 1290.
the pacification
made which
the Protestant
States of Mo-
vania and Au-
stria: and fol.
1295. the paci-
fication made
with the Boho-
mians.

(u) Surinus ad
an 1576.

Landorpius
1598.

tue of which acte (and of other such acts made by his succes-
sors) the Lutheranes and Catholicks on severall houres vse
their Rites in the same Churches in many townes of Germany
&c. even to this present day. Wee know more over, that *Ma-*
thias Caesar (r) in the yeare 1606. articulated with the protestant
rebellious *Hungarians*, That from thenceforth it should be lan-
ful for every man through-out the Kingdome of Hungary to have
the free use of his religion & to beleene what he would: And in the
yeare 1609. for to purchase his owne peace, and safetie of his

Empire, gaue free exercise of Religion, and deliuered the Vni-
uersitie of *Prague* to the rebellious *Seitaries* (on the 12. of Iuly)
and severall Churches in *Austria* and *Moravia* to the Hereticks
then in armes, on the 12. of March. We know lastly, that *Hen-*
ri the third, King of France, was constrained through the dan-
gers otherwise threatning his State, to condescend to a worse
peace (then any of these mentioned) with the *Hugonots*; at
largeth set downe in *Surinus* (u): And that *Henry* the Fourth
seeing his flour-de-lucis throwen into a labyrinth of troubles
by the same Heretiques, to provide for the good of his King-
dome by quietnes, confirmed vnto them their libertie of Reli-

gion, gaue stipends to their Ministers out of the publique treasu-
rie, and certaine strong bolts as a pledge for performance. Yet no
Censures issued against these Catholicke Princes or subiects
for such agreements: no Declaration made by his Holynesse, or
by the Cleargie against them; but churches open to them
alwaies, & Sacraments administred. Which questionless could
not be, if his Holynesse, if the Prelates of those Kingdomes, if
the Cleargie and Vniuersities did thinck the adhering
to such agreements were a sinne. And though at the commen-
cement of the peace twixt *Mathias Caesar* and the Protestants,
there was some opposition at first, made by *Melinus* the Nun-
tio Apostolique, and by the Bishopp of Vienna: yet publishd
they no Excommunication, nor other Censures: which not-
withstanding they should, if none could in conscience adhe-
re to a peace giuing so much power & libertie to Protestants.

Whereas therefore the *Supream* Councell and *Confederate*
Catholicks haue in a miserable condition articulated more ho-
nourably and securely for the faith, even in a *Cessation*, then
Cæsars and Monarks. (who commaunded mines of gould,
and

and had vast Armies at their back) haue done, concluding either Cessations or peace; And whereas great vtilitie arising thence to the Catholick cause, besides the extreame necessitie of the affaires of the Kingdome, pressed your *Honours* to it, (either of which, to wit profit, or necessitie, is sufficient to make conscionable a Cessation, peace or league with Heretiques, (as the Lord *Nuncio* himselfe admitteth in some of his letters to your Lordships:) & no man of learning hath ever yet denied, nor can deny with reason:) And whereas likewise, the Articles containe nothing *euill of its owne nature, or present circumstances*; but rather much to the aduancement of *Religion and vertue*: how can the said Cessation for the whole, or any part, be against *Religion*? (unlesse peraduenture We admit, a truth of contradictories in point of *Cessation & Religion*?) how in it any iust ground for *Excommunication*? since this ground is not, but where sinne is: & these articles are so farr from being sinfull, as no *Confederate Catholicke* can reiect the Cessation without mortall sinne, both that of disobedience against the *Supreme* Civill power in a civill busines of so great weight, and of periuirie against his *Oath*, which binds him to obey their orders; nay nor these who embraced it, can without a third mortall sinne, which is that of breach of fidelitie (even with *Sectaries*) in a matter of moment, and where the object implies no euill. Shall they then be excommunicated for not committing so many mortall sinnes? for practising the acts of vertues opposit? It is an untollerable error to thinke it.

Neither do they weaken these our grounds, who object the Declaration made by the Lord *Nuncio*, and *Congregation*, against the Cessation, and before it was concluded: as though, it were unlawfull after that Declaration, which before was conscionable: for who sees not, but the said Declaration (as is manifest in the words of it,) did presuppose unlawfullnesse in the nature of that agreement, which was then to be made: and that therefore it was issued, to admonish the people and diuert them from it which was in it selfe thought euill (not euill by reason of any protestation, or manifestation made thereof by the *Cleergie*: who certainly by no meanes would confesse, it was their owne declaration that made it unlawfull.) whence further is consequent, that, since wee haue proued it implieth

no evil in it selfe or before the *Declaration* issued: so it cannot by vertue of the *Declaration*. Besides, this *Declaration* was no *command*, and therefore (in case the Prelates had a iust ground for it) could not make that vnlawfull, which before was lawfull. Moreover, it shall appeare in our answer to the next *Quere*, That the *Cessation* concluded, was not the same against which the *Declaration* issued; and consequently could not be made vnlawfull by it.

Neither likewise is it worth the regarding, what is unreasonably objected of two Counties given by the *Councell*, and by vertue of this *Cessation* to *Inchiquyn*, namely *Waterford* and *Kierry*. It is manifest to all *Ireland*, there was nothing left him, but farre lesse by two whole Counties then he commanded, or had under contribution before this agreement was made. For the Confederats have gotten from him the Counties of *Limericke* and *Tipperary*: both which were wholly over-runne at his pleasure, and contributed, *lawer Ormond* onely excepted.

The second Quere answered,

THAT by what we hitherto said, is proved, That your Honours, for disannulling the said Monitorie excommunication and Interdict, needed not (at least *in foro poli*) to have made any appeale: since they were altogether groundlesse, & hence not only unjust, but also invalid, even of their owne nature and in themselves before any appeale. Which briefly may be declared out of the two plaine errours contained in the sentence of these Censures, and in the proceedings of the Lord *Nuncio* and *Delegates* (as we humbly conceive, and with reverence to their Lordships.) One is, that in the sentence of Excommunication and Interdict, there is relation to the former Articles against which the *Declaration* was made at first; but were after mended with better in their place (as we have already touched): and yet, as if the *Cessation* had bene concluded on such *reiected Articles*, the *Censures* proceede against it. Which is an errour in the substance of the matter prohibited or commanded. And consequent

ly disannulling it (if there had beene no other cause) forasmuch as it might be said, to concerne the *Cesiation* actually now in being. The second is an error properly called intollerable (though not *Iuris*, but *facti*; nor *patenter expressus* (according the phrase of the law) in words, but too too evident in effect, and in that which the sentence both commaunds and prohibits:) which by the consent of Canons (a) and Doctors renders the sentence of no force, yea in case it were, onely an intollerable error of fact, specially when it enjoynes the commission of sinne. Tis, that the said sentence and censures prohibit in effect and against the lawes of God, fidelitie in lawfull promises, Religion in sacred Oathes, and obedience to the Supreme Civill power, in matters concerning the Temporall government, and of their owne nature, and by all right depending of civill jurisdiction, and in which (as wee have sufficiently manifested in the first Quere) no sinne is implied: That likewise they commaund breach of faith, perjurie, and disobedience: yea (wee may boldly say it, as wee wofully feele it) Sedition; and Rebellion against the Kingdome and Confederacie. VVhence is manifestly consequent, that the Censures were invalid even before the appeale..

But in case, we admitted these *Censures* to had beene valid untill the *appeale*, or that they would be valid and binding after the ninth day (which was the last of the daies given for admonishment, and deliberation) if within the tearme prefixed by the law, an *appeale* had not beene interposed; yet must we hold, that your Honours *Appeale* in your owne behalfe, and in the name of all the Confederate Catholickes, who did or doe adhere unto your Honours, having beene so made within due time, & after the forme of law tender'd, with expression of reasonable causes therein for provoking to his *Hollinesse*, and *apostles* being demanded, and granted (though these *apostles* are no other then *refutatories*) must notwithstanding suspend the *monitory* or conditionall *Excommunication* and *Interdict*, with all their effects and consequences, and all other proceedings of the *Censurers* in pursuance of the same.

It's plaine by the sacred Canons; undoubted by the doctrine of Divines and Canonists, and cleere by the very light of reason, which God hath given intelligent Soules. *Reado*

cap.

[a.] Cap. Venerabilibus Sponsis quoque de sentent. excom. in 6. & cap. Per tuas, 9. Nosignitur, 22. ad. 11. Tol. la. c. x. Caudum. disq. 22. a. 24. de Cens. dub. 3. ubi citat Setum in 4. d. 22. q. 1. a. 2. Sua. in 10. 5. de Cens. disp. 4. sec. 7. n. 32. ubi etiam habet, quod quando censura est sic nulla in utroque foro, non est necessarium petere absolutionem ad cautelam. Sic, etiam Henric. 1. 13. de exco. c. 15. Sayrus l. 1. de Cens. cap. 16. &c.

cap. Præterea 40. ext. de appellatione, & cap. Si á Iudic. de appel-
lat. in 6. [that we may passe over, to shun tediousnesse, many
such places) and you shall finde nothing more plainly resol-
ved in the Canons. (c) VVe have beene demanded (sayes Cele-
stine the I I I. in cap. Præterea) in case a Iudge, pronounce sen-
tence thus, If you doe not satisfie Sempronius within twentie daies,
know that you are excommunicatd, suspended, or Interdicted, and
be against whom the sentence is given, appealing in the meane time
(that is, sometime within the twentie daies) makes no satisfa-
ction to Sempronius, at, or before the day prefixed, whether, he (to
wit, the party against whom the sentence was pronounced)
hath incurred the censures, as bound by the sentence, or hath his ap-
peale interposed saved him harmelesse. ? VVe thinke, that the in-
terposing of the Appeale hinders, and takes away the force of the
said sentence. And thus (sayes Glossa (d) on the word, Impe-
dire) the sentence is suspended which doth yet bind, or which is not
yet of force (he meanes, untill the time prefixed for admoni-
tion be expired, and other conditions (if any be, as that was,
in this case, of not satisfying, performed) for it is not binding
untill the condition be extant. But if it were once binding, its effect
could not be suspended by an appeale coming after, &c. behold
here our very case. Our Iudge, or Iudges, the Lord Nuncio
and his foure Delegats (as they are called: though really, it be
much doubted, whether the Congregation held last at Kilken-
ny gave them any such delegation, to proceede with so much
rigour against the whole bodie of the Kingdome, to bring so
much danger upon it, and throw so much confusion, sedition,
and wickednesse into every corner, and into the very entrailes
of the Confederats, and this by abuse of Ecclesiasticall Cen-
sures, to bring scandall on the Church: notwithstanding) the
Lord Nuncio with his foure Delegats commaunded the Su-
preme Councell and their adherents, who embraced the Ces-
sation, to reject the said Cessation within or before nine daies
after the intimation of their commaund, and likewise enjoy-
ned all others of the Confederats, not to joyne with, or con-
sent to this Cessation, otherwife declared the former excom-
municated, and interdicted, if they fell not from it within that
tearme prefixed, and the later likewise in case they transgressed
after they had got sufficient notice of their Lordships deter-

mi-

(c) Præterea re-
quisitum fuit, si
quis Iudex ita
protulerit sen-
tentiam, Nisi
Sempronius in-
tra viginti dies
satisfeceris, te
excommunica-
tum, vel suspen-
sum aui Inter-
dictum cognos-
cat: Ille, in quem
fertur sententia,
medio tempore
appellans, ad
diem statutum
minime satisfac-
cerit, utrum ille
ali sententia
ligetur, aut in-
terpositione Ap-
pellationis tui
existat? Videtur
autem nobis, quod
huiusmodi sen-
tentiam appel-
lationis obstacu-
lum debeat im-
pedire.
d) Gloss. in verb.
Impedire: & ita
suspenditur sen-
tentia, quan-
dum tenet, non
enim tenet nisi
extante condi-
tione. Ex quo
autem teneret,
non suspenderetur
eius effectus
&c.

mination & Censures in this behalfe. The Supreme Councell interposed an appeale to his Holynesse for themselves and for all the rest unto whom the Censures might be extended, and tendered it according the forme of, and within the time prescribed by the Canons. Is it not then consequent, that these monitorie and conditionall Censures were by such an appeale suspended? It followeth manifestly, if the judgement of Celestine was just, or the law doth not erre. In both, monitorie and conditionall Censures: in both, an appeale made before the daies of admonition, or allowed for deliberation were expired, or before the condition was in being (that is, before a new transgression of the precept after sufficient notice had thereof, no appeale being interposed, and after the daies allowed for appearance were once past:) therefore in both cases, the appeale must have the like effect. *Videtur autem nobis, quod huiusmodi sententiam appellationis obstaculum debeat impedire. Non enim tenet (sayes Glossa) nisi extante conditione, &c. ut supra.* Celestinus in c. Præterea, supra Glossa ibid.

The first branch of this second *Quere*, and of our assertion in answering it, being thus declared; the next branch (that is, whether the effects and consequences of the Censures be likewise suspended) is of easie resolution, and the resolution of as easie prooffe. For it is a knowne maxime in the Canons, That *accessorius doe follow the principall*: cap. *Dilectis filiis. de appellat.* and it is certaine, that the Censures we speake of, are the principall, and that the effects and consequences are but accessories. Wherefore the Censures being in themselves suspended by the appeale, the effects and consequences must be of necessitie suspended. And verely there is no difficultie may be moved in this point. But some controversie perhaps may arise about the third part of this *Quere*; where it's demanded, whether all other Censures or proceedings of the Lord *Nuncio*, Delegats, or others, in pursuance of the former, on the same ground are likewise suspended or hindered by the said appeale? yet even this branch is so cleared by cap. *Si à Iudice. de appellat. in 6.* that no thing more can be desired. For in this Chapter Boniface the VIII. both determines and declares, That, an appeale once made, the Iudge from whom is no more Iudge over the appellant, and that his iurisdiction is suspended (under-
Accessorium sequitur principalem.
What effects and consequences of excommunication and interditt? See at full in Tolet. l. 1.
Bonifat. 8. in c. Si à iudice de appellat. in 6.

(understand in the case, and others thence following, wherein the appeale is made,) and that therefore, the appellants is not bound to appeare before him. If the Iudge from whom be no more Iudge, if his jurisdiction be suspended, the appeale being interposed, if therefore the appellants be not to appeare before him, what is more evident then, That the said appeale is a suspension of all other proceedings or Censures issued or to be issued in pursuance of the former, or on the same ground from the Lord Nuncio and his Delegates, or any other deriving authoritie from them? for such proceedings and Censures cannot be either iustly or validly but from persons who are Iudges in the case, and whose jurisdiction is not suspended in the same cause. Hence is manifest that the Lord Nuncio's renovation and confirmation (in his apostles refutatories) of his former sentence, his execution of the Interdict, and all other his proceedings against any of the Confederats, on this ground, and since the appeale, are unjust and invalid for what either concerns conscience, or the Canons doe determine. Which is further proved out of cap. Dilectis filiis, 55. de appellat. §. Quia vero, Where Innocent. III. decreed against the Deane of Altisiodorum for having proceeded to the execution of an interdict notwithstanding & after an appeale made to Rome: the reason of which decree, the Pope gives in these words, Cum appellatione ad Sedem Apostolicam interposita nihil debuerit innovari. Where likewise he declares for the same reason, that the Excommunication pronounced by the Archbishop of Sein (or Senonensis) against the same Deane, & denunciation made, to had been of no force from the beginning, and that the said Archbishops Chanons did without guilt (notwithstanding the denunciation) communicate with the Deane so censured: and lastly that all proceedings attempted after the appeale were in themselves voyd, as he does by his Decree disannull them, yeelding for reason, that the accessory is of the same nature with the principall; which we have before touched. Can we desire any more Canons, more pertinent or fitting our purpose? It's needlesse we alleage them, though many more we have.

(e) Candidus
disq. 22. art. 39.
dub. 4. ubi citat
Lopez par. 2. tr.

But because peradventure, besides these Texts of Law, the sense of Doctors may yet be expected, let the Authors seeke in the opposit margent (e) be read, and it will be found, that the



the common doctrine of Summits, Divines, & Canonists hath hitherto bene, That a just appeale, of it selfe, and presently when tis made, devolves the cause to a higher tribunall, suspends the sentence given, and withall hinders the inferior Iudge from proceeding any further. All which the Doctors comprehend in the double effect, which they say is necessarily annexed to a just appeale, to wit, *devolving* and *suspending*.

Now for a just appeale, (f) *Candidus*, *Bonacina*, *Sayrus*, and others commonly affirme, two onely conditions are necessary. The first, that it be made with expression of sufficient, probable or likely causes, or such as the appellant thinkes *bona fide*, are just, probable, likely or sufficient motives for appealing; but that no other expression, or of any other causes, is required. And truly with the Doctors herein, the very Canons and Glosses doe concur cap. *ut debitus*. verb. *ex rationabili*. ext. de *appellar*. cap. *Dilectis* *fligt*, 55. verb. *Legitime* eod. tit. cap. *Cordi nobis*, eod. tit. in 6. often in the case of the Glos. and c. *Bona memoria*. §. *Pramissis* ext. eod. tit. (g) where Innocentius III. cleerely determines, the appeale to be iust, and the causes of the appeale to be sufficient, when it is made *ex probabilibus*, aut *verisimilibus*; that is, when they are probable, or seeming true, though indeede they be not in themselves true. It sufficeth therefore (sayes the Glosse (h) further declaring this matter) that the cause of appeale seeme probable, though it be not certaine or true. It is enough it be such, as being proved, may seeme laidefull: for then the appeale is valid. The very same, in effect, is affirmed by Glossa in cap. *Cordi nobis* (i) de *appellar*. in 6. as may be reade in the margent. The second condition necessary, and which accomplisheth a just appeale is, that it be made and tendered to the Iudge from Whom before the daies prefixed

decernimus reducendos, ac fructus medij temporis perceptos censuimus pariter assignandos eisdem.

(h) Glossa ibid. Sufficit ergo quod sit probabilis causa appellationis, licet non sit vera vel necessaria. Talis videlicet debet esse, quod si esset probata, legitima esset: tunc valet, appellatio.

(i) Glossa in cap. *Cordi nobis* de *appellar*. in 6. *Causa rationabilis ad appellandum ab interlocutoria, vel gravamine aliquo, illa est, qua si esset vera, deberet legitima reputari aut quasi esset vera, necessaria inferret appellantiem fuisse gravatum.*

de clavibus, cap.
12. Pal. in 4. d. 8
q. 1. art. 4. con. 2.
Sayrum lib. 1. de
censur. cap. 16. n.
23. Bonac. tom. 1.
tract. de censur.
d. 1. q. 2. punc. 2.
numer. 3. Diana
P. 5. T. 3. R. 30.
Silvester verb.
appellat. Hieron.
Rodrig. ibi. Por-
tel. eod. verb.
(f) Cand. supr.
disq. 3. Et reli-
qui apud ipsum

(g) Cap. *Bona memoria* §. *Pramissis*, ext. de
appell. *Pramissis* igitur dili-
genter inspectis,
predictos Abba-
tes & Mona-
chos in eum sta-
tum, in quo is-
pore appellatio-
nis facta ex ve-
risimilibus, &
probabilibus ad
nos legitime in-
terposita noscun-
tur, (propterea
pari virili-
bus salvo iure)

for admonishment, or the condition be fulfilled (when the appeale is from a conditionall excommunication, censure or sentence, as that against the adherents to the Cessation was) or at least within the time limited for entering appeales.

That both conditions haue beene observed punctually in the appeale (made by the Councell in their owne and in the name of al the rest of the Confederats) is apparant to al haue read it, who haue weighed the motives therein expressed, and noted the dates both of it, and of the sentence against which it was interposed: this hauing beene of the 27. of May. 1648. and that of the last of the same Moneth, dispatchd away presently to their Lordships, the *Nuntio* and his *Delegats*. But of the second condition there is no controuersy. All the question is of the first, that is, Whether the causes or motives of the appeale were sufficient? Yet even herein we see no difficultie. Doubtlesse the Councell, and many thousands more of the Confederats, were perswaded *bona fide*, that the *Nuntio* proceeded (with due observation of his Lordship may it be sayd) vniustly, and that they had expressed before his Lordship most iust motives to appeale from his Censures, and complaine to his Holinesse of such proceeding. Which *bona fides* alone, would suffice vs for securing our owne consciences in opposing his sentence and in hindring (to our power) the execution of his censures and al his other proceedings on the same ground; yea though the motives were onely iust in the opinion of the Appellants. Which is the doctrine of authors now cited, and must be of al Diuines; who generally teach (and it is in it self most certaine, and taught vs by natural reason) That the immediat and next rule according which we must square our actions in matters of fact, and cases of conscience, is our owne proper *bona fides* and *opinion*.

However this be of our *bona fides*; whether we had it or no? yet doubtlesse even the Lord *Nuntio* and *Delegats* wil not deny, but the causes expressed in the appeale are probable, or likely, or such as if they can be proued to bee true, wil be thought sufficient. There is no man of iudgment hath ever yet seene, or wil see the appeale, that can, or wil denye this. And if so, how could it be reiectcd *in foro exteriori* as vniust, whereas it hath the conditions prescribed by the Doctours, canons & Glos-

Glosses for a iust appeale: the one, to had beene made in due time, and the other, to haue expressed in it motiues, which may seeme in *facie Ecclesie* to be probable, likelic, or such as, being proued, would be thought lawfull. For that of *bona fides*, mentioned by some of the Diuines, is not required by them but onely for securing the interiour conscience of the Appellant, and not for any thing might concerne the exterioriour tribunal; wherein iudgment is not giuen of the *interiour opinion*, or *bona fides* of the appellant, but of that which appeares exteriorly, as of the causes expressed in the appeale, &c. which, if *secundum allegata, & probata* they be found true, the judge *ad quem* (to whom onelic, it belongs) will giue sentence for the appeale, whether in the meane time the interiour opinion of the appellant was a *bona fides*, or no. For of the interiour, God alone is iudge; not the Church. And this is the reason, why the canons and glosses (speakeing of the reasonableness and justice of the causes, which, being expressed, makes the appeale just, require onelic such motiues as seeme probable or true (though in themselves they be not true) or such as being proued [to wit before the judge *ad quem*] would make the appeale lawfull; and saye nothing of the *bona fides*; conceauing this to be impertinent, and not belonging to the external court of iudgment, which they doe cheefly regard.

Yet because the *bona fides* of the appellants may be sufficientlie coniectured out of the probabilitie, likelihood, or euidence of the motiues expressed in the appeale; who can doubt (that knowes the state of Ireland, and lookes on our condition with an indifferent eye) but the Councel and Confederats had not onely probable motiues, but even reasons in themselves, and before the world most euidently iust, which necessitated them to make their addresse to his Holiness, and throw themselves into his protection [though for point of conscience this was needlesse] from the violent proceedings of the Lord *Nuncio* and his either Delegates or Subdelegates, as being (for priuate ends) opposit to the aduancement of Religion and of the common Cause, destructive of the Kingdome, and illegally thwarting the supream Ciuil power of the confederats, by drawing the people (in as much as in them lye) to sedition and rebellion. Al which motiues & many more, your

G Honours

Honours expressed at large in your appeale : and their truth may be manifestly inferred out of our sad condition the great necessitie (the countrey stood in,) of a Cessation, and the no lesse vilitie might be deriued from it for the Catholick Cause (as your Honours of the Councell declared in your sayed appeale, and we haue shewed in our answer to the first *Quere*). Vnto which motiues may yet be added (according the power for adding, your Lordships referued to your selues in your appeale) what is consequent out of them, and out of other particulars expressed in the appeale, videlicet, That your honours, and the rest of the Confederats were commanded on paine of Excommunication, and Interdict, not to adhere vnto a Cessation concluded vpon actually, and from which neither you nor they could sal without omission of most vertuous acts, fidelitie in performance of promises, religion in sacred oathes, and disobedience to Authoritie; nor without commission of sinneful acts, unfaithfulness in Contratts, periurie in oaths, and disobedience to Authoritie; from which likewise you could not sal without extremely endamading and hazarding the Commonwealt, by reason of the strength and multitude of enemies, which (that Cessation reiectd) would on al sides come vpon vs; besides the iudgments of God would hang over vs for our perfidiousnesse (k).

(k) See both in sacred and profane histories the dreadful punishments

that attended alwayes the breach of publick faith, and perfidiousnesse. See in the 2. of Kings. 24. how heauen pursued with vengeance the King and whole Kingdome of Israel, for hauing broken faith with the Gabaonites, though nolesse then a hundred yeares since the covenant made with them (Iosue. 9.) yea and though in that covenant the Gabaonites used subtiltie and were by profession Infidels. Were not the chosen people & Nation of God, for this breach of faith, scourged With an vniuersal famine, euen in the dayes of holy King Dauid, propter Saul and domum eius sanguinum, quia occidit Gabaonitas? And, not with standing so many thousand starued to death by this famine, was the diuine wrath appeased until seauen of his sonnes, who brake the league were resigned over by King Dauid to the pleasure of the offended Gabaonites, and were crucified a line by them vpon a mount before the face of God. Et dedit eos in manus Gabaonitarum, qui crucifixerunt eos in monte coram Domino. & repropitiatus est Deus terræ post hac.

See in the 36. of Paralipom. the deplorable fate of the unfortunate King Sedecias, and of his Kingdome, for hauing, contrary to promise made, renounced his allegiance, broken league with, and taken armes against Nabuchodonosor the Monarch of Babilon. A rege quoque Nabuchodonosor recefferat, qui adiurauerat eum per Deum. Was not his Kingdome therefore utterly destroyed; the holy citie razed, the Temple of God, burn'd; the miserable King deprived of those eyes, wherewith before he beheld the covenant broken; finally, his country planted with Aliens, and both himself and the remainder of his people translated to Babilon.

bilion for to leade the life of flaves in a longe captivitie of 70. yeares: Yet Sedecias wa. drawn to this breach of peace, through causes no lesse specious then Nabuchodonosors Idolatry in Religion, and tyranny in hu government of the elect Nation of God.

See in Gregorie Sceldius, and in Knolls Turk. hist. the formidable evant of a Cessation or ten yeaves truce broken [formerly concluded twixt Vladislaus the Christian Catholick King of Hungary, and Amurath the Turkish monarch) but broken by the Christian king (some after twas published) by the persuasions and over much importunitie of parte of the Cleargie, speciallie of Iulian the Florentina Cardinal (then Legate Apostolick in the Kingdome of Hungarie) who needs would dissonce in the Oath interchangeably taken by Christians and Turkes for observing the Cessation. Alas ! how late came repentance, when the poore Hungarians beheld their valiant and good Vladislaus slaine before their faces in the battaile of Varna, their nobilitie slaughtered, Iulian himself (with other authors of this misfortune) at naked, covered onely with blond, and yeelding the ghost, their army (ever before this faithlesse dealing, victorious) totally destroyed, and their deare countrey, with somany other bordering Kingdomes of Christianity lest open as a prey to the fury of Barbarians: what reproach, and what confusion, to see a Turcke obtayne a victory from Christ against Christians, when Amurath, in the heate of that battaile, observing his owne army put to the worst by the valour of Vladislaus, drew forth out of his bosome the scroll of its articles of Cessation, signed by the Christian King, and casting his eyes to heaven, challenged Christs Divinitie, if he did not presently shew himself a revenging God for that dishonour done his name by this perfidiousnesse of Christians?

VVhat some would faine here say (yet it is onely to say somewhat, not because they conceive it hath any colour of reason) that it belongs to the Iudge from Whom, not to the appellat or others to know whether the causes of the appeale be probably or evidently iust, is answered by Glossa in cap. Cum appellatibus. de appellat. in 6. where these expresse words are, that it belongs to the Iudge Superiour to whom the appeale is made, to examine and judge of the lawfulnessse of the appeale: and by Glossa in cap. ut debitus. extr. de appellat. That, this depends not of the Iudge from Whom, but of the truth it selfe. Whence may be inferred, That the appellat, as he really sees probability, or evidence in the causes alleaged, may accordingly addressse himselfe to the superiour Iudge, and obey no more the inferiour, to whom it noway belongs to judge of the causes (when they are such, as being proved, they would be thought reasonable) otherwise then by giving a bare answer or apofles. And this is it the Glosse intends. (For doubtlesse he intends not to exclude the power of the superiour Iudge in examining and giving sentence for, or against the appeale. Yet certaine it is, that if the appellat sees the very
superiour

(l) *Glof. in c. Sollicitudinem. ex. de appell. verb. Episcopus possit. Sed quare iudex non potest cognoscere de appellatione ab ipso facta, sicut cognoscit in suis iurisdictionibus?*
 Ideo non potest cognoscere de appellatione, quia cum probabilis causa exposita est in appellatione, iam exemptus est à iurisdictione illius. & est illi suspectus & presumptio est pro ipso, quod semper vellet iudicare pro sua iurisdictione. &c.

(m) *Cum autem ex rationabili causa putaveris appellandum, coram eodem Iudice, causa appellationis exposita, tali viz: quasi foret probata, deberet legitima reputari, Superior de appellatione cognoscat, &c.*

(n) *Si à iudice à quo (propter gravamen, quod tibi proponis illatum) appel-*

superiour Iudge not to sentence aright; either in the matter of the appeale, or any other, it is lawfull to appeale further, even from him to his superiour, if any be.) *Glof. cap. Romana. verb. Minus legitima. de appellat. in 6.* Lastly, and most directly to the purpose, by *Glof. in cap. Sollicitudinem. ext. verb. Episcopus possit. (l)* Where tis demanded, *Wherefore cannot the Iudge from Whom an appeale is made, know* (that is call in question, examine juridically, and judge) *or give sentence of the same appeale?* And tis answered, *That therefore he cannot be a Iudge of the appeale made from him, because that a probable cause being alleaged in the appeale, the appellat is exempted from his iurisdiction, as one suspected to him, and because it may be presumed that the Iudge in this case would give sentence in favour of his owne iurisdiction, &c.*

Nay the very Text of cap. *ut debemus. §. Cum autem.* puts this businesse, out of all debate: where it is said, (m) *That it belongs to the superiour Iudge to examine and give sentence, whether the causes were in themselves reasonable, or no? As for the Inferiour Iudge, the appellat is bound only to expose or alleage before him probable or reasonable causes, to wit such causes, which being proved, ought to be reputed lawfull. And therefore the judge from Whom hath no right to examine juridically the truth of them, since the appellat is onely bound to expose or alleage them before him, and not to prove them (for who sees not, that to be bound to alleage, and to be bound to prove, are farre different): And consequently he cannot hinder a just appeale, by saying, it belongs to him to know, and iudge whether it be a iust appeale, or no? or whether the causes expressed be reasonable or no?*

Which is yet more plainly, and indeed throughly cleared (without any place left for expositions, or distinctions) by cap. *Si à iudice. de appellat. in 6.* where its expressly decreed by Boniface the 8. (n) *That for to prove you had iust, or probable causes to appeale, you are not bound to appeare or answer before the Iudge from Whom you appealed in regard (sayes Boniface) that he is no more your Iudge, Whereas by your appeale (especially When it is from an extrajudiciall, or a gravamine, as our appeale is) his iurisdiction is suspended. Onely one case excepted (which is not to our purpose yet) that is, When the Iudge from Whom*
saniori

seniori ductus consilio, being better advised, would recall his past sentence, whereby the appellant was grieved: for onely in this case he is bound, being called, to appeare before the Iudge à quo to the end he may heare the sentence of his grievance recalled.

What can be desired more manifestly convincing? If the Iudge from whom, once the appeal is interposed from a grievance, and probable causes therein expressed, (that is such, as being proved, ought to be accounted probable) if he be no more Iudge, if he have no jurisdiction over the appellant, (but onely in that one case) if the appellant be not bound to appeare before him for to prove the truth or justice of his motives of appeale, how doth it belong to him to examine juridically the truth of these causes? or to sentence the appeale to be good or bad? or on pretext hereof, to hinder the appellant from prosecution of the appeale; or getting the benefit of an appeale? Certainly it cannot be, unless we admit a plaine contradiction. And certainly as yet we have not seene one Chapter, passage, or Glossé of the Law could be produced to the contrary by such as seeme to maintaine the invalidity of the appeale, though they have laboured much in heaping together citations. But all to no other purpose then either, that (as we doe grant, and never denyed) probable causes of the appeale are to be alleged (o) therein, and before the Iudge from whom, though not their truth to be proved before him, or that when the Iudge is refused, or excepted against. or (to speake the tearmes of the Law) when there is a recusation of him, (not an appeale) that then the recusatorie exceptions are to be proved before arbiters given by the Iudge and chosen by common consent of the Plaintiffe and Defendant. It is in this case of reculation that cap. cum speciali. de appellat. extra. and cap. Legitima. cod. tit. in 6. speake, and not in case of appeale, which is farre different from the former.

quod si obijciatur, & Glossa ibid. §. Vera. & Nota in super. c. cum appellat. cod. See all this confirmed by c. Interposita de appellationibus. extra. where it appears sufficiently (though it be for the contrary opinion produced) that the validitie of an appeale is to be proved before the Iudge ad quem. For the case of the said Chap. is: One appealed, who expressed onely a probable cause in his appeale. The question was, whether it were sufficient for the Appellant to prove before the Iudge to whom

lat, ad docendū te fore gravatū & ad audien- dum revocationem eius sū grava- minis (si de ipso docueris (nā supponit quod ad hoc nos te- neris, ut infra statim) tibi cer- minus prafiga- tur. Nec coram eo (cum ipse per se id videre ha- beat) docere, nec etiam tan- quam corā Iu- dice (cū per ap- pellationem sit suspensa ipsius iurisdictio) cō- parere teneris, nisi ad hoc solū, ut revocationē ipsam audias si eam duxeris faciendam.

(o) This on ly, and no more [for what con- cerns this mat- ter] can be de- duced out of c. Pastoralis §. verum. de ap- pellat. cap. Le- gitima. cod. & Gloss. §. Legiti- ma. in 6. c. Ro- mana. cod. §.

to whom

to whom, that his cause was probable, although perhaps not true? And it was resolved, that he ought to prove it to be both probable and true, unless he offered of his owne accord to prove this truth before the Iudge from whom, and yet was not heard: for in this case, it is enough he prove before the Iudge ad quem, that the cause of his appeale was probable, though not true. In which question and answer made by the Pope, there is not a word for the Adversaries, but much to our purpose, as appears by the Glosse partly, and partly by these words nisi hoc se offerens probaturum. &c. VVhence, is gathered, that he had no obligation to prove it before the Iudge à quo, but What was done by him, was of his owne accord, not by any tye of the Law. At least, we may confidently say, that nothing may be inferred against us out of this Chapt. Nay this Text speaks in case the Appellant, even before he enters his appeale, doe offer to prove his allegations to be true, and not after the appeale is made: as appears in the Glosse there, and by the Glosse of cap. Si à Iudic. verb. tenetis. de appellat. in 6. & ibi per Dominic. which the common practice proveth. VVhence further is manifest that there is no obligation by this Chapter to prove before the Iudge à quo, the truth of the appeale, since questionlesse before tis given in, there can be no such obligation

It is true that the Iudge a quo hath so many dayes allowed him by the Canons, to consider what kind of apostles he is to give, and that in admitting or rejecting the appeale, hee doth in so much (*ex animi sui opinione*) out of his owne private opinion judge of its probability or improbability; yet followeth it not hence, that he giveth any juridicall or binding sentence or judgement (of the causes) obliging (either before God or the world) the conscience of the appellant. For the giving of the apostles is nothing else but a bare answer to the appeales, which the Law permits him to give either *dimissory* or *reservatory*, that is either *admitting* or *rejecting* (the appeale) either *right* or *wrong*, but at his owne perill if he give not a right answer, and admit the appeale when it is from a just and probable grievance, and hath in it expressed probable causes; the Law providing likewise for the libertie and safetie of the appellant, that whatsoever answer this be, he is not bound to conforme himselfe to it (if it be to his disadvantage) since he hath once lawfully appealed, or with expression of reasonable causes, and since this Iudge from whom hath no power to summon him, nor to examine witnesses, nor forme any Proccesse concerning the lawfulnessse or unlawfulnessse of the causes expressed; which power notwithstanding, for to summon, examine, forme a proccesse, must be supposed in him that is the proper Iudge and can give a binding sentence of the lawfulnessse or unlawfulnessse of the appeale.

VVhence followeth, That they say nothing to purpose who
object,

object, That the Lord Nuncio, and Bishops did not conceave
 such pressing necessitie for concluding the cessation, or such
 great profit to arise thence (which are the prime reasons al-
 ledged in the appeale for excepting against the censures.) but
 rather that it was fixed on with intention to bring in the late
 reiected peace, and for other consequences following that bu-
 sinesse; and consequently, that they conceaved no truth in the
 causes alleadged. For in case we did graunt their suspensions to
 be true before God (as they are not) yet nothing hence may
 be inferred for disproouing the lawfulnessse of the appeale, *This great op-
 position, and
 seeming alte-
 ration of iudg-
 ment in the
 Lord Nuncio,
 must be very
 strange to such
 as know that it
 appears out of
 Letters and
 Messages from
 his Lordship to
 the Councell
 (which are in
 Record) how his
 Lordship abou-
 the first of
 March, when
 there was
 but a bare*
 foro exteriori, (wherein onely they proceed): since they can-
 not deny but the causes alleadged are such as if they can be
 proued, they ought to be thought lawful: and since they are
 not to be iudges herein; as hath been now scene by so many
 canons, glosses, and reasons: and lastly since we are bona fide per-
 swaded of the probability (if not evidence) of our motives;
 nay though we had no bona fides interiously, but only seemed
 exteriorly to have it. And verily this answer satisfieth.

reports of a Cessation, to be made with the Parliamentary Scots, desired the Councell that
 businesse [to wit the Cessation with the Scots] should goe on, for that he expected a blessing
 thence not onely to this, but also to other Kingdomes. Nay a little before Inchiquyn was de-
 clared for his Maiestic did not he approve a cessation to be made even with him? VVhat is
 the reason of so much desire expressed for making a Cessation with the Parliamentary Scots,
 rather then with Inchiquyn, or others? or why with Inchiquyn himselfe when he was for the
 Parliament, and not much more now when he is for the King? Neither doth the Lord Nun-
 cios answer come in any wise to satisfie, where he sayes in another of his Letters (to ex-
 cuse this) that his intention in his former Letters or Messages was, to have an accommoda-
 tion or league made with him, not a cessation: for who is it conceaves not, that a cessation of
 Armes with sectaries must be conisionable, (even by the Lord Nuncios owne concession)
 and no iust ground for Excommunication, if an accommodation or league be lawfull: since
 the cessation of its owne nature brings along with it lesse communication with them, or
 hinderance to annoy them.

Yet for a more ample satisfaction, We further saye to the
 first part of this obiection, that as doubtlesse it concerns more
 neerly the supream Councell to know the condition of the
 COUNTRY, as who onely were then and are yet entrusted with
 the gouernment, were and are more often and more particu-
 larly enformed: so it belong'd (and yet belongs) to them of
 right to declare the abilitie or disabilitie of the COUNTRY for

warre, and the necessitie & profit of either Cessation or Peace, and consequently to conclude a Cessation and peace or continue warre (We meane, so farre as the general Assembly furnisbeth them with power; as in this particular of concluding the present Cessation, they haue.) Vnto which determination of theirs, and vnto al others in matters meerly ciuill, (such as this is) where manifest sinne doth not appeare [as in this businesse appeares not] the Lords Spiritual, and both Cleargies, regular and secular are to obey as subiects, & bound heerunto in conscience and vnder mortal sinne, according the consent of holy Fathers, and Diuines, where the matter is of moment, and specially when it concerns the peace of the Commonwealt, and allegiance to the Crowne or Kingdome) not to resist as

See the Fathers
and Expositors
on Rom. 13. 2.
Oecumenius,
Iudges.

Theophilactus, Augustine, Ambrose, Bernard, with Cornelius a Lapide. Omnis anima (sayes Chrysostome) potestatis supereminetibus subdita sit: sive Apostolorum, sive Evangelistarum, sive Prophetarum, &c. All other Fathers and Expositors together with Chrysostome understanding the same passing of S. Paul, of obedience due to the Ciuill Magistrat, and due vnto them even by Charchmen.

VVith this sence of Fathers and Expositors all Catholike Diuines agree. See them, together with Canonists and Canonists to this purpose, in great numbers with Layman. l. i. Trac. 4. c. 13. and Becan in his Sum. Theol. de Leg. hum. c. 6. q. xi. Nay that not onely the ciuill power obligeth thus indirectly, but also directly, by their lawes or commaunds. Victoria, Soto. Medina, and many others maintayne. Howeuer this be, all confesse that Clearks are bound in conscience to obey the iust ordinances of the Common wealt: and vndoubted it is, that they are to be accounted iust vntill manifestly they appeare vniust.

That the ciuill lawes and ciuill commaunds of the Commonwealt, or of the ciuill Authoritie, do binde consciences to their performance vnder mortal sinne, if the thing commaunded be of moment, Vasquez teacheth d. 158. c. 4. and others with him; Suarez. l. 3. c. 27. n. 4. who are cited and followed by Becan in Sum. Theol. de Leg. hum. c. 6. q. 3. n. xi. & 12.

As for the second parte of the sayed objection, it cannot be more cleared then it hath beene by your Lordships in your printed answers to the Lord Nuncios propositions, and in your printed declarations in pursuance of the sayd answers in both which you declare vnto the world, and oblige your selves, not to receiue any other peace but that which hath beene agreed vpon by the last Assembly, and transmitted with the Agents, vnlesse peraduenture the Kingdome and Assembly shal otherwile decree for the good of the commonwealt. Vnto which decree you are by oath, as other Confederats to conforme and submit your owne judgments. And verily,
what,

what cou'd be more expected from your Lordships? you are Confederats: you tooke the oath of Association: you were thought worthy by both Estates Ecclesiasticall and temporall in a generall Assembly, to have the Kingdome put into your hands, and the power of concluding a Cessation, residing only in your breasts: you were esteemed (*per consequence*) by the Nation, to be men of honour, wisdom, and conscience: finally, what your Honours did in this business, was through the vehement desires of the Prouinces, and knowne necessities of the Confederats; and hath beene likewise generally approved of and receaued by al the Catholick Party in Ireland (yea with ioyes and thanks as the onely meane of their preservation); onely a few refractories oppose it, men (without any rashnesse, but with much griefe wee speake it) who seeme to haue the evil of proper interest before their eyes, vnconscionable designs in their hearts, and who haue for such vnworthy ends sufficiently discovered themselves *enemies of all publicke quiet and happinesse of the Nation.*

VVhat the seditious Libellist, Author of the *Vindication* (who by that scurvy piece, hath nothing served, but much disserued the *Nuncio*) here objects against the opinion we are to hold of your integritie, and likewise against even your authoritie or power in signing the Cessation, where he sayes, twas only coucluded by a malignant infamous, perjurd partie of the Supreme Councell, by others inveigled by them, and by some who officiously signed, being no members of the Councell: this forged calumny (we say) might be contem'd, and (in regard it is so knowne to be a meere fiction of a Libellist) not otherwise answered then *that his penne had too much gall and poyson*, and his matter neither rime, nor reason. Yet to undeceive the deceived (if any be such) and to prevent or take away the Impression, which perhaps the reading or hearing of this unknowne detractor might give, or hath given some simple soules: wee thought fit to insert in this place, two Acts of generall Assemblies, whereby this Impostur may be confounded. The first is a Declaration made by the universall vote of the Kingdome, in the year 1646. 2. of February vindicating these members of the Supreme Councell from these aspersions of perjurio

and disloyaltie (then first endeavoured to be cast upon them by their Adversaries, but now revived againe from hell by the Libellist) in their negotiating (with the Marquesse of Ormond) the rejected peace. The words of the Declaration are these ; *And this Assembly doe hereby likewise declare that the said Councell, Committee of Instructions, and Commissioners of the Treaty have faithfully and sincerely carryed and demeaned themselves in their said Negotiation, pursuant, and according to the trust reposed in them, and gave thereof a due, and acceptable account to this Assembly.* Given at Kilkenny the second day of February 1646.

Surely this Declaration made (after exact debate of the matter) by the Lords Spirituall, Temporall, and Commons in a generall Assembly of the Whole Kingdome, must be of more weight and power to perswade any reasonable creature, then a passionate and obscure Libellists bare assertion. At least the new, and legall establishment of such members in their former dignitie, and government of the Kingdome, (notwithstanding all the opposition made, and labours taken by their Adversaries to brande them with some character, whereby to render them incapable) must convince any judgement. Is there any likelyhood, that a whole Nation, in its representative body the generall Assembly, and ever since in all its reall parts, in all Provinces, Counties, Cities, Townes, yea and Armies, would have tyed themselves, and sworn to obey them whom they had either proved, or justly suspected, not to have discharged the trust imposed, or therefore had beene perjured, malignant, infamous ?

The second, is That wherein provision was made for supplying the resident Councell with legall members, in case of the necessarie absence of such as were nominated by the last Assembly, or of any of the just number, who are bound to reside, by vertue of which Act they have subscribed as resident, who were legally brought in to supply the vacant places. And for such Honourable persons, as above the number of residents did vote or subscribe the Cessation, its knowne they did it not officiously, but out of their dutie to the publicke, and by the power of grand Counsellors, conferred on them by the last Assembly.

Where

*See this second
Act at large in
the printed E-
stablishment
concluded upon
by the last gene-
rall Assembly
at Kilkenny, the
22. day of No-
vem. An. 1647*

Wherefore, it being now cleere from first to last, both our of our solutions to alis, or may be objected against the appeale and out of our positive reasons for it, that according the prescript of Canons and sence of Doctours, it hath all the conditions of a iust appeale, and that the Lord Nuntio and Delegats are even by the law deprived of all or any power to question, examine, or iudge the reasonableness or iustice thereof, or to cast any obligation on vs (either before God or the world) to submit to his or their iudgment in this behalfe: it must be inferred by a necessary consequence out of what is formerlie said, That your Lordships Appeale doth not onely by the Canons, but also by the sence of Doctors suspend the censures, their effects and consequences, and al other proceedings of the Lord Nuntio, Delegats, Subdelegats (and of al and every, or any other deriving power from him or them) on the same ground. For that, as we haue formerly seene, their doctrine is, That a iust Appeale, of its owne nature, and as soone as tis interposed, hath al and ech of the sayed effects.

And hence they may be fully satisfied who hetherto were perswaded, or feareful through their owne ignorance, or haue beene deluded by the disaffected, who of purpose throw scruples into mens consciences without law or reason, taking occasion by the kinde of *Apostles* the Lord Nuncio granted which are *refutatories*, not *reverentials*, or *dimissories*, to perswade the simple that by reason these *refutatories* were granted, and not *reverentials*, the appeale can be of no force. Which erring assertion is plainly convinced by what hath beene already said. For since it is manifested, that the reasonableness, justice or lawfulness of an appeale depends not of the Iudges brest or answer unto it (which they call *Apostles*) but is to be accounted such, if the causes alleaged in it seem evident, probable, or likely, or would be thought probable in case their truth might be proved: and since it is no lesse evident, that a *refutatory* (that is to say, a rejecting) answer proceeding either from the malice, negligence, corruption or ignorance of the Iudge, or from any other motive whatsoever, cannot make the appeale unreasonable which before the answer was in it selfe reasonable, and contained the expression of causes either evidently or probably iust; since lastly
it

it hath been proved, that a iust or lawfull appeale, of its owne nature suspends the Iudge from being any more Iudge of the appellant, from iurisdiction over him, or power to question the lawfulness of his appeale; how can *refutatorie apostles* (given by the Iudge as answer to the said appeale) have the power to hinder these suspensive effects? If it be said, that the Canons, which thus deprive the Iudge are not to be understood of him whē he gives *apostles refutatorias*, we must say this is a most ridiculous evasion, and meere non-sence. Certainly they were not made against Iudges who give reuerentials, or *dimissorie apostles*. For what Iudge, who gave *reuerential*, hath ever yet beene so franticke, as to give wittingly such apostles, and yet to frame a procelle against, and call in question the probabilitie of the appeale, whereas by giving such apostles he deprived himselfe of all power, yea should the appeale otherwise be frivolous. Neither have they beene instituted onely against Iudges, who denie both kindes; in regard the words of the Text are not, by any proper or common sence they may have, restrained to any such limitation, nor by the adioyning Glosses or opinion of Doctors commenting thereon, but may and ought, according their proper meaning, to be understood generally in all cases of iust appeales, whether apostles be given or no, whether they be *refutatorias* or *dimissorias*, &c. And surely where the Canons would have onely

Innocent. 4. in Conc. Lug. cap. 1. super. de appellat. in 6. super. de appellatione ab eius causa instructio

facilior valens in processu haberi. districte precipimus, quod ille a quo appellatur apostolus appellanti (iuxta tenorem constitutionis nostrae super hoc editae) tribuas requisitus: si veron exhibuerit, extunc, si forte in causa procedas (nisi appellationi renunciatum fuerit) eius invalida & irrita sit processus.

But to unmaske wholly the non-sence of this evasion, let us observe the absurditie, and contradiction which thence doth follow, For if cap. *Si à Iudice. de appellat. in 6.* and the like, are of no force against the Iudge, when he gives onely *refutatorias* for answer to a iust appeale, then it must follow, that

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that the Iudge by an uniuſt act (that is by giving ſuch an illegall anſwer, or *apoſtles refutatories*, when he ſhould haue given *dimiſſories*) reapes a benefit, to wit, recovers the iuriſdiction and power which before was ſuſpended by (and from the inſtant of) the *appeale* interpoſed untill that preſent of receiving the *refutatories*. And if it be ſaid, that his iuriſdiction was not ſo ſuſpended, untill the daies paſſed, which are allowed by the law for deliberating on the apoſtles; then, beſides that this is againſt the Text, a plaine contradiction followes in the Canons and Gloſſes (which is,) that during this intervall, the ſaid Iudge from whom may call in queſtion, examine iuridically, give ſentence, &c of the lawfullneſſe, or unlawfullneſſe of the *appeale*, (ſince he is not reſtrained of his power, during this intervall:) and yet all Canons and Gloſſes affirme the contrarie, as we haue before ſcene. The like contradiction followes, if any confeſſe (as he muſt) that indeede the Iudge could not proceede during the intervall of time twixt the *appeale* made, and apoſtles given, but will nevertheleſſe ſay, that he may, preſently after the apoſtles when they are *refutatorie*; here is, we ſay, the like contradiction, in regard that, if the *appeale* was at firſt reaſonable and juſt, it remaines ſo alwaies notwithstanding the *refutatorie* apoſtles unjuſtly given; and conſequently by all the foreſaid Canons, Gloſſes, and even by naturall equitie, the Iudge cannot proceede to the execution of his ſentence, and by the Canons, and Gloſſes, he is no Iudge, he hath no iuriſdiction, he cannot examine, or call in queſtion the cauſes of the *appeale*, neither is the appellat bound to anſwer his ſummons. Certainly if he could proceede to the execution of the ſentence, he might ſummon him, and examine the cauſes of the *appeale*, both becauſe, that the examination of theſe cauſes might make him alter his ſentence, which was in it ſelfe perhaps wholly unjuſt, and becauſe it is therefore ſaid, he might proceede to this execution, in aſmuch as it is ſuppoſed he loſt no part of his iuriſdiction by the interpoſition of the *appeale*, ſince he gave onely *refutatories*. If therefore he haue in this caſe a plenarie iuriſdiction over the appellat, why cannot he ſummon him concerning the cauſes of the *appeale*; or why is not the appellat in this caſe bound to obey him? It cannot be ſaid, that the lawes exempt

the appellant in this particular from him; for the verie prime Text which can be alleaged for this, to wit cap. *Si Iudice. de appellat.* in 6. exempts him likewise in all other cases, and declares the Iudge to be no more Iudge over the appellant. And if they say, being reduced to extremities, that the Iudge *a quo* may call in question even the causes of the appeale, and Iudge them, then they engage themselves against all the Canons, Glosses, and Doctors, and against all their reasons, whereof that is insoluble which we have before produced in the *Glosse* of cap. *Sollicitudinem. extr. de appellat. verb. Episcopus posset*: where we have seene the question propounded, why the Iudge *a quo* might not be a competent Iudge of the appeale, and answered, it is therefore, because that the appellant is exempt from his jurisdiction by expression of a probable cause in his appeale, as from a partie suspected, in regard the law presumes that he would still give sentence in favour of his jurisdiction, and of his former acts, or sentences, which all reason perswades us, he would doe. For who is, that upon unjust grounds would give sentence against any, upon his just appeale give him only refutatorie apostles, would not also give sentence against him in the causes of the appeale, for maintenance of his own jurisdiction and righteousness, or perhaps in prosecution of his former ignorance, corruption, malice or spleene, if the law did enable him with power to be Iudge in this case: whence further would follow, that the subiect would be often remedilessly exposed to the tyrannie of everie unjust and partiall Iudge. This very same is a reason most sufficient, and discovered unto us by the light of nature, why we must hold that it lyes not in the Iudges brest to disanull just appeales by giving refutatories (whether it be granted or denied that he is Iudge of the causes.) For otherwise an ignorant, corrupt, or malicious Iudge, (notwithstanding his most illegall proceedings) might overthrow at his pleasure, the most reasonable and necessarie appeales in the world; innocencie might be oppressed without remedie, and all injustice and tyrannie mantayned, if (we say) the Iudge for having given refutatories might proceede to execution during the said just appeale: for the execution may be an evill irrecoverable by any address might
be

be made after, as indeed it would be in our case, were it allowed. Which how repugnant it is to the verie law of nature, and to the intencion and ayme of holy Canons, who doth not see?

It was this convincing reason (we may justly thinke) made Glossa in cap. *Licet*. de sentent. *Excom.* in 6. maintaine our assertion in the like case, where the Iudge gave only apostles refutatories. Which is the second argument we make use of to remove this blocke whereat some seeme to stumble. For though the words of Glossa be not the verie Text of the law, yet no man can denie but in such a businesse they are a sufficient president for us: and no man can denie (who is versed in Canons or Canonists) but this verie Glossa is next after the Text of esteeme, and of more authoritie then sortie Doctors who should maintaine the contrarie, if they produced not the expresse letter of the law to the contrarie, or some Glossa as cleerely for the opposit assertion, as this for ours, or at least some reason convincing a naturall equitie for the adverse opinion. None of which as wee are sure they could not as yet produce, so wee are confident, they shall neuer be able hereafter to produce. The words of the foresaid Glossa are: *Put the case I was convented before an Ecclesiasticall Iudge against Whom I alleaged some declinatorie exception, perhaps that he was the yfman of my adversary; or I alleaged some dilatorie exception. The Iudge would not admit my exception, but declared that notwithstanding any such he suiconvensus would proceede in the principall. Whereupon I appealed in Writing, expressing a reasonable cause in my appeale, and desired with due instance that he would give me apostles. He gave me refutatories, prefixing withall a time to proceede before him in the principall. But I appeared not the day appointed. Wherefore he excommunicated me as contumacious. Tis certaine, that if the cause inserted in my appeale be true, I am not Excommunicated.*

Glossa in cap. Licet de sent. excom. in 6. Pone casum, quod coram Iudice Ecclesiastico, coram quo posui aliquam exceptionem declinatoriam, foris quod erat consanguineus adversarii mei, vel aliquam exceptionem

dilatoriam posui. Iudex noluit admittere istam exceptionem, sed pronuntiavit quod ea non obstantis procederet in principali, unde appellavi in scriptis & legitime expressa causa rationabili in mea appellatione & peti cum debita instantia ut daret mihi apostolos, qui dedis refutatorios assignando mihi terminum ad procedendum coram ipso in principali, quod non comparui. Idcirco tanquam contumaciam me excommunicavit. Certum est quod si causa inserta in mea appellatione sit vera, non sum excommunicatus.

Behold heer our very case of an Appeale interposed, and onely *apostles refutatories* graunted; which *refutatories* not with standing the *Glosse* affirms, It is certaine, that the appellat was not bound by the sentence of excommunication issued against him, if the causes express'd in his appeale were true, (that is, lawful and reasonable for appealing). How may it therefore be denyed but a iust appeale exempts the appellat from the power & iurisdiction of the Iudg from Whom, though this Iudg do not admit his appeale, but onlie giue *refutatories* and even the worst king of *refutatories*, for such were the *Apostles* mention'd in this *glosse*; otherwise this excommunication of our *Glosse* would oblige the appellat. And how may it be that any wil hereafter stumble at this block of the Lord *Nuntios apostles refutatories*, giuen as answer to the Councells appeale; or thinke, that *these apostles* could hinder their iust appeale from suspending the sentence of the Lord *Nuntio*, its consequences, and his iurisdiction in this matter?

The obiections made by the Aduersaries are al of straw: and are partly dissolued already, and the rest do heer follow. One is: That the Iudg doth not giue waye to the *suspensive effect* of an appeale when he giues *refutatorie apostles*: as appeares out of the *Glosse* in cap. *Cordi nobis*. de Appellar in 6. §. *exhiberi*. Al which we confesse, and is too manifest for to make any matter of dispute, by reason that the very act of giuing *Refutatories* is a denial of giuing waye to the *suspensive effect* of the appeale.

And therefore the *Glosse* very wel & truly sayes that the Iudg denyeth (in asmuch as in him lyes) to giue Waye to this *suspensive effect* when he giues *refutatories*. But neither doth that *Glosse*, nor any other, nor likewise any text of law, or Doctour saye that the Iudg by his illegal denyeing to giue waye to this *suspensive effect* of a iust appeale, can hinder or take away *in rei veritate* before God or man from the appeale iustly interposed this effect annexed to it *ex natura rei* by the canons; though indeed he doe (but vnconscionably, sinnefully, inualidly, and at his owne peril) as much as in him lyeth to hinder it. Wherefore though he giue not this waye, yet the law giueth it when the appeale is from a *iust or probable grievance*, as appeares evidently out of al the fore-mentioned *Glosses*, Doctours and canons, and by the very light of reason.

Another

Another obiection is formed out of c. cnm speciali. de Appellationibus. 2. §. Porro. c. Romana Ecclesia. eod. tit. in 6. §. si uero. & §. sententia quoque Glossa in cap. vt super appellatione. eod. §. nota insuper. c. non solum. eod. cum clara Glossa. c. cum appellationibus. eod. cum Glossa. §. nota insuper. & §. nota primo. c. licet. de senten. excom. in 6. & glossa ibi: §. nota ex hoc. whence they deduce, That what the Iudg *a quo* doth in prosecution of the cause, after *apostles refutatorie* giuen by him as answer to an appeale made from him, is of such force and effect in law, That the Iudg *ad quem*, or *to whom* the appeale is made, cannot recal the sentence giuen by the Iudg *from whom*, vntil the validitie of the appeale be proued or disproued before him: and if disproued, that he cannot proceed in the principal matter, but must remit the whole to the first Iudg: but if proued, that then he may absolue the appellant from al censures renued after such an appeale, and so proceed to examine the principal matter. And hence is further deduced, that when such refutatorie apostles are giuen, the appellant is not exempted from the iurisdiction of the Iudg *from whom*, otherwise the Iudg *to whom* likely would presently recal the proceedings, & al acts done by the Iudg *a quo*, after the appeale made from him. But this difficultie is easily cleered: for al the sayed canons & Glosses speake onely and are to be vnderstood of proceedings attempted by the Iudg *from whom*, after an appeale made *agranamine*, concerning some emergent, or incident article, not of his proceedings against the Appellant after the appeale made from a griuance in the principal cause. Moreouer we saye, That even in case of an appeale from a griuance in onelie an emergent article, though the Iudg *ad quem* wil not presently recal such proceedings, vntil it apere vnto him that the appeale was iustly made; yet the law doth suspend the, as appeareth plainely by the often mentioned c. Si a Iudice. de Appellat. by the Gloss of cap. Licet. de senten. excom. in 6. and so many other places before rehearsed. How ever this be, (though nothing be sayed in either branch of this answer but whats very true) the matter is more plaine in our case: for your Honours Appeale is not *agranamine interloquutorio super articulo incidenti vel emergenti*, but from an *extrajudicial sentence in the very principal cause*. Nay your appeale in effect is

ante sententiam, because it was interposed before the fulfilling of the condition, or dayes (prefixed for deliberation) were expired; and consequently (though no other cause might be produced, at the following proceedings are voyd, cap. *Ad praesentiam*. iuncta *Glossa. de Appellat. extra*. With many other Canons.

*Zerula in
Prax. Epif.
verb. Appel.
resp. ad quas, 19*

As for that with *Zerula* in his *Praxis Episcopalis* seemes to say for maintayning the Iudges Iurisdiction When he giues onely *Apostolos refutatorios*; Wee answere, that his bare assertion of a practice contrarie to so many reasons, lawes, and doctōrs, cannot be of weight; specially when he doth not alledge one reason, text, or author for himselfe. Secondly, that the practise of one place, though it were iust (as this, if there had beene any such, could neuer be) binds not another. And indeed the best practicioners with vs say, the contrarie practise is vsed in Ireland. Thirdly that *Zerula* must be vnderstood, where, and when the Appeale is in it selfe friuolous; not where it is manifestly, or probably iust; otherwise that practise would be most vnconscionable, most corrupt, yea and against the expresse letter of the law, specially if you ioyne the Glosses; and consequently not to be in any wise vsed. Fourthly, That he speakes in case of an appeale made from *iudicial interloquutorie* or from decrees vpon *emergent or incident* articles, (for in this case we confesse, That the iudge from whom may proceed to the principal, as not yet suspended from his iurisdiction. *Glossa in c. licet. de senten. excom. in 6.*) but not when the appeale is from an extraiudicial sentence or grievance in the very principal cause (as ours was:) in Which last case the law ordaines that the Iudge *a quo* can proceed no further, as being suspended from his iurisdiction, cap. *si a Iudice. de appellat. in 6. cap. super eo. x. cod. tit. extra. & Glossa in cap. Licet. verb. conualescat. de senten. excom. in 6.*

To that doubt which some others moue, that the Lord Nuncio hath a power to proccede *Omni appellatione remota*, & consequently, that though the Appeale be iust, and the arguments hitherto produced, would conclude against Apostles refutatorie giuen by ordinarie Iudges; yet when the power is so extraordinarie, they do not conuince: Wee answere that in case the Lord Nuncio had in his Commission such a Clause (which

(which is verie ordinarie in the Popes letters and Bulls) yet no power thereby is conferred on his Lordshipp, to hinder iust or probable Appeales, but onely such as are in themselves (not by his Lordshippes word or sentence) meerely friuolous, ground lesse, and against the law : as expressly may be seene in the Canons here placed in the margent, especially being ioyned with their Glosses; and as the Canonists commonly maintaine. Furthermore we saye, That if his Holinesse, *ex plenitudine potestatis*, would giue or hath giuen his Lordshipp a power aboue the canon law, and such extraordinary faculties, as that he should not be bound to admit even iust appeales; yet heerby his Holinesse neuer intended, nor could lawfully or conscionably intend, to hinder the appellants from opposing the execution of an vniust sentence giuen against them (much lesse from opposing a sentence or censures of their owne nature inualid) when their owne consciences tels them that his Lordshipp grounds himself vpon il information, or that the obeyeing of the sentence may proue disaduantagious either to the Publike or particulars, against equitie and right. For in this, and such like cases the law of nature takes place, and allowes the appellant or partie aggriued, to preferue his owne right (eue by force, if no other meane be at hand) against the vniust proceedings of a corrupt, ignorant, malicious, or il enformed Iudg; speciallie if this partie aggriued be a Prince, state, Councell or Commonwealth, which, hath a supream civil power, as our case is. Nay if his Holinesse (who is the supream Ecclesiastical Iudg on earth, and from whom there is no appeale) in matters belonging to his iudicature otherwise then from himself to himself did vpon il information, or for any other cause whatsoeuer, giue iudgment or pronounce censures contrary to iustice, and conscience, or which would be disaduantagious to our publick cause, or destructive of our Commonwealth or of the liues, liberties or fortunes of the Confederats, or of the Councell and that part of the Confederats who adhere to them and to the cessation, (being incomparably the greater part of the Kingdome) there is no Catholick Diuine in the world, but must must confesse, it would be lawfull to resist & oppose his Holinesse in this case, and to hinder the execution of such a sentence; yea that such as are in Publick autho-

Cap. Pastoralis. de Apel. in ne. Glos. verb. emendari. & cap. ut debemus. cod. iunc. Gloss. verb. ante sententiam. & in verb. absque rationabili causa.

Barthol. Lancello. Specul. Menoch. March. Secat. & plures alij, cum communi Doctorum, apud August. Barthol. in coll. ad decretal. in dist. cap. Pastoral. n. 2.

ritie

ritie, would be bound in conscience, and vnder paine of a most grieuous mortal sinne, to vse their vttermost endeauours for opposing the sayed execution, euen *vi & armis*, if it were necessary, and no other meane left of reconciliation, or for preservation of the Publick. Yet certainly we do not feare, that any such evil shall ever come immediately from the sacred throne of our most blessed father Innocentius.

Lastly what is objected by some, out of cap. *Ad nostram*, and cap. *Reprehensibilis*. de Appellat. That no appeale is allowed from a sentence giuen in a Controuersy of Faith, and consequently that your Honours appeale is against the law, since the adhering to the cessation, to be vnlawful, is an article of Faith; and the sentence of excommunication and other Censures were pronounced by the Nuncio, to make the Confederats religiously obserue the sayd article, that is not to adhere to, or obserue the sayed Cessation: we saye, al and every branch of whats heer objected, is so false, and so absurd, as it cannot be sufficiently admired, with what face can any broch such ignorant positions. What is more clearly, and without controuersie decreed in sacred canons, then that all weighty causes, and questions happening about articles of Faith (which are the most weighty of all causes) are to be referred vnto the see Apostolick, & euen *frivolous* appeales in such controuersies be admitted, that is, though the causes of appealing in these matters appeare not to be so just or reasonable as are required by the canons to be in appeales interposed from grieuances in other matters? see this expressly defined in the canons placed in the margin, (a) and so constantly taught by canonists, as our opposits cannot produce one Author for themselves. And what is more out of al doubt with both Hereticke and Catholicke Divines then that even his Holinesse, as Pope and Vicar of Christ, yea and together with his Consistorie of Cardinals, and (which is more) sitting in a generall Synod of the Vniuersal Church on earth, might erre in controuersies of fact which principally depend on informations se and testimonies of men? (Reade Bellarmine 4 de Romano Pontifice, cap. 2.) And consequently what is more certaine and evident, then that it is impossible, the adhering to the Cessation concluded with *Inchiquin*, to be vnlawfull, can be a matter or article of Faith, or as such declared by any power on earth (not

(a) Alexander 3.
in cap. Maiores
de Baptismo.
Maiores Eccle-
sia causas, pra-
sertim articulos
fidei contingen-
tes ad Petri se-
dem referendas
intelliget, qui
eum quarenti
Domino, quem
discipuli diceret
ipsum esse, respo-
disse notabit,
Tu es Christus
filius Dei viui,
& pro eo Domi-
num exorasse
ne deficiat fides
eius. &c.
See cap. Ut de-
bitus. §. ultim.
iuncta Glos. in
verb. causis de
appellat. cap.
Translationem
de officio Lega-
ti.
Bellar. l. 4. de
Rom. Pont. c. 2.

to speake of the Lord Nuncio, who hath no power, no not together with his National Synod, to define or declare such articles even in capable matters, or in *questionibus juris*, otherwise then as a particular Doctour) since it is plaine that the question of the lawfulnessse or unlawfulnessse of it, is a meer question of fact, and principally depending on the informations and testimonies of men? Finally what is more plaine to any knowing Reader of the two chapters, alleadged against vs out of the Canons by some of our Opposits, then that neither of them hath a word to that purpose, or which, by a scholer, may be understood in the sence they are produced against vs. For cap. *Ad nostram*. speakes onely of iust corrections of persons who are by profession *Regulars*: as if a Religious man transgresseth manifestly his rule, or institutions of his Order, in this case (and very iustly) no appeale is admitted (*nisi tameñ modus excedatur*, sayes Glos. ibid, verb. *minus*) if a certaine punishment be prescribed by the canons, for such a transgression, & no other inflicted; for if the punishment be arbitrary, then, according Panormitan, even a Regular might appeale in case of correction, yea though his crime were notorious. And as for cap. *Reprehensibilis*. it makes the same sence, though it be not restrained solely to the correction of Regulars, but is more generally understood *de disciplina Ecclesiastica*, of the correction of al Ecclesiasticks delinquent. from which, when it is moderat, and lawful, no appeale is admitted; but if an Ecclesiastick be unjustly grieved or vexed by his Superiour, it is allowed him, (and he cannot be hindered of this libertie) by al both diuine and humane lawes to appeale. See the Glosse of the sayed Chapter. verb. *nec subiecti*.

Hence it is, that wee cannot but approve the Councils, and other Confederats practise, in not fearing, and not regarding the Lord *Nuncios* or any others Excommunications and Censures, issued against them who countenance and adhere to the said Cessation, having the doctrine of great writers, and the common sence of Divines to guide vs herein, who teach that when the Censures are invalid either by reason of a iust appeale, or otherwise, they are not to be cared for, but may be disobeyed and their invaliditie is to be published by those against whom they were pronounced.

See Bellar. l. 4. de Rom. Pont. & l. 2. de Concil. authoris. Where he teacheth, & With him the Catholick Doctours commonly, that onely his Holynesse is infallible in defining, or declaring matters of Faith: & that even generall Councils, (much lesse Nationall) are of no such infallibilitie, but may erre untill or before his Holynesse confirme the. Nay some catholicke Doctours (as Bella. l. 2. de Concil. cap. 5. hath) affirme, that Nationall Synods, though so confirmed, are not infallible.

Grassius in Decis.
aur. l. 4. de con-
sur. c. 3. Gabr. in
4. sent. d. 18. q. 3
col. 2. Syl. verb.
Excom. cap. 15.

Grassius in de-
cis. aur. l. 4. de
Cens. c. 1.
Ostiens. in cap.
Rom. de sent.
Excom. l. 6. &
ibi Ioan. Andr.
columna. 4. &
in cap. const. f.
100. iii.
Ias. in l. quod
iussit. n. 41. &
42. ff. de re iud.
dicata.

ced. After which publication or notice had of their nulli-
tic, if any will seeme to be scandalized at the neglect or con-
tempt of such censures, the standall can be no sinne in the
Censured, since it is onely a *scandalum Pharisaorum*, not *pu-
fillorum*. So expressly Grassius. And in case Wee had not so
many reasons, and authorities to maintaine the iustice of our
opposing the said censures, yet as Grassius excellently aduer-
tizeth, since the Lord Nuncio and other Prelats who are of his
minde, do see, that such Censures proue not health-full medi-
cines, but redownd rather to the hurt of soules, (that Wee may
speake, for the present, according their opinion who hould the
Excommunication and interdict are both valid and iust) and
bring along with them on vs and all others, their opposers de-
ath of sinne, and despaire of conscience: the Lord Nuncio and
Prelats who ioynd with his Honour in pronouncing the said
Censures, ought to desist from publishing any more, or further
continuance of the alreddie published: in regard that Eccle-
siasticall Iudges are bound to carry themselves like indulgent
fathers, pious, careful of their childrens soules; and because
that the power of Excommunicating was not given them to
make it a snare of despaire, and destruction for soules, but for
their preservation, and to be a salve for restoring health.

Out of all which reasons, lawes, and doctours, we cannot
imagin, but everie indifferent Iudgement will approue our
opinion, and conceaue our practise in opposing the said Cen-
sures to be most iust. Yet to take away all the doubts of the
doubt full, and leaue noe refuge for, even the obstinat, to carp
at vs, by objecting, That, in a busines of controuersie and
doubt (though indeede we see no more any doubt) we
ought to obey the Commaunds of our Superiours; let them
reade *Diana P. 4. T. 3. R. 9.*, (who recites other authors)
where he holds and teacheth, that *When or where one iustly
feares any notable incommenience either in his life, fame, or fortunes
(nay if he feared those evils to another) by following his Superiours
opinion, (to wit in case the Superiour did not doubt of his owne pro-
ceedings, and yet he doubted, whether the Superiour proceedes iustly
or no:) in those Circumstances he cannot be obliged in conscience,
to conforme himselfe to his Superiours opinion, because that accord-
ing the common maxime, in doubt full things *saueandum est reo**

or to him that is in possession of his libertie, and because that the subject in such a case is in possession if not of his libertie, at least of his owne securitie, and right of preserving himselfe, or another from danger. Neither in this, or any other case, wherein he is not bound to obey, can he be excommunicated. Hitherto this learned Diuine, With others whome he cites (a).

And surely this very last passage were enough to quiet consciences, and discharge them of scruples; but specially if it be taken together with that common tenet (b) of Diuines, which teacheth that its lawfull to follow any probable opinion (where the question is, whether the act be conscionable, or no?) yea though the contrarie opinion were more safe, and more probable, as the said Anthony Diana, Beacan, Vasquez with other authors cited in the margin, and with the torrent of Doctors, do teache: if likewise what Sanchez, (c) Villalobos, Fillucius, Merolla, and others hold, be considered, to wit, That the resolution of one learned and pious auhor, doctour, or Diuine studying a case, and examining thereasons pro et contra, doth make a probable opinion, how great soeuer the number be against him: if also it be considered, there are many most learned, and most vertuous Diuines of both Cleargies, even great Prelates and most Illustrious & Reuerend Bishoppes, known to be of the ablest and most vertuous men in the Kingdome, who after a long and serious debate of all the proceedings, grounds, and reasons of this Cessation, and of the declaration and Censures issued against such as adhere vnto it, haue resolved notwithstanding, yea and with strong reasons declare euidentlie, that nothing can be found in the said Cessation against Catholick Religion, or which may be a iust ground for Excommunication. For certainly, so many sentences of such men concurring, and hauing so many reasons, which they esteeme manifestly conuincing, hauing solued the obiections which might be made to the contrarie, must at least wise render this way probable, and consequently secure in Conscience. Neither doth it any wise preiudice the probabilitie of their opinion, that the lord Nuncio and Congregation declared the Cessation and the adhering to it to be vnconscionable: for it is certaine, that neither his Lordshipps definition, nor Congregations assent, could giue their owne way, any other then

(a) Anthon.
Diana. P. 4.
T. 3. R. 9. Sanchez in sum.
tom. 2. l. 6. c. 3.
n. 27. Vasquez.
in 1. 2. q. 19. a.
6. d. 61. c. 6.
vide comp. Dia
na. verb. subditus
(b) Nauarrus.
c. 27. num. 280.
Valencia disput.
2. q. 14. p. 4.
quod citat &
sequitur Bra
can. in sum. de
bon. aq. int.
cap. 4. q. 9.
con. 2.
Diana p. 2. T.
13. R. 1. P. 4.
T. 4. R. 4. § ad
id vero. San
chez. in sum.
tom. 1. l. 1. c. 9.
n. 14. & Theo
logi communi
ter, contra Pe
rez & alios
paucos.
(c) Sanchez in
in sum. tom. 1.
l. 1. c. n. 97. Villa
lobos: tom. 1. r.
51. diff. 17. n. 3.
& Beroio in c.
1. n. 281. de const.
& sine ulla di
stinctione. docet
Fillucius tom.
2. r. 21. c. 4. n.
134. & Merolla
tom. c. disp. 3. c.
4. dyp. 1. n. 4.
Sanchius in se
lect. diso. 5. n. 18.
& disp. 64. n.

65. & Diana
P. 4. T. 4. R. 10.
Vide comp. Dia
na. verb. opinio
probabilia.

Vid. Bellarmin.
supra.

then extrinsecall probabilities (even this extrinsecall probability now ceasing where the reasons to the contrarie are so manifestly insoluble, and an error (with reuerence still to their dignities) proued in their proceedings and sentence) for what concerns conscience; since they haue no power to make it an article of our beleefe, that the Cessation is against Conscience. Nay this Controuersie being wholly or principally depending on a question of fact, cannot by any power on earth be so defined, but that it may be lawfull to follow the contrarie opinion which defends it to be conscionable.

The third Quere answered.

TO the third, that your Lordships printed answers to the Propositions of the Lord Nuncio, are not so short or unsatisfactorie in any point, as they might afford iust ground for an Excommunication. The reasons of which resolution are apparant in our answeres to the two former Questions, & likewise hence, That the Lord Nuncio in his propositions inserted nothing, but what did meerey belong to the ciuill government (wherein notwithstanding if any error could be declared to haue beene committed, your Lordships were content upon manifestation thereof, to amend it) or else what was provided for sufficiently before those propositions were offered.

The fourth Quere answered,

THAT whereas the Oath of Association ties all the Confederates to be dutifully obedient and obseruant of your Lordships iust Orders, and Decrees: And whereas in our answer to the first *Quere* it is sufficiently proved, that the present Cessation is most iust and lawfull, and by consequence your Orders and Decrees commaunding the Confederates to accept and obey the Cessation must be iust, it followes, that disobedience to such your Lordships commaunds, in not adhering to the Cessation, is Perjurie.

The

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The fifth Quere answered,

THAT if it shall be found that the Excommniation and Interdict of the Lord *Nuncio* is against the fundamentall lawes of the Kingdome, and which the Prelats have sworne by the Oath of Association to maintaine, it is not lawfull for them to publish or countenance the said Censures contrarie to your Lordships positive orders. Neither doe wee see, how can any of the Prelats otherwise answer, if they condemne not the Oath of Association of injustice, and themselves of having done ill in taking or approving it.

The sixth Quere answered.

IT being the common sence of Divines that in an Oath lawfully taken for the good and profit of another, none can dispense without his privitie and consent unto whom it was sworne, but in certaine cases exprest by the authors cited in the margent; and the oath of Association being in it selfe lawfull, and sworne to the Kingdome for the publicke good of the Nation, and of each Confederate in particular, certainly a dispensation cannot be given to any person or parties of the Confederates to breake the said oath, or to take away the obligation of it, without the consent of the Assembly, unto which by a speciall clause of the said oath (and this is to be well noted) the alteration or dissolution of the oath is reserved, none of the cases excepted by authors, having place in this matter. VVherefore if any other of what power soever, though it were his Holynesse, did otherwise attempt to dispense with any of the sworne Confederats, both the Dispenfer and Dispensed would hereby transgresse the law of God, and incurre the guilt of a mortall, and most haynous crime, besides that such a dispensation would be of its owne nature invalid, voyde, and no way securing, for the future, the conscience of the Dispensed: and consequently this partie dispensed withall, must of necessitie as often as he makes use of such a dispensation so many times commit a mortall sinne: the Dispenfer likewise, and without question, participating by his first action, of the same evils. All and everie branch,

*Bonac. to. 2.
d. 4. q. 1. pun.
ultim. n. 8. ci-
tans Smar. c.
41. Sanch. l. 1.
de Matr. dis.
32. Filluc. 11 a.
23. c. 9. q. 10.
nu. 279.*

and particular of which resolution, followeth by necessarie inference out of the common and certaine doctrine of Classe
Vid. Bonaci. sicke Authors, who without controversie teach, that the obligation of a lawfull oath is (in a weighty matter) under mortal sin, and *de iure divino* by the law divine naturall and positive, & that even his Holynesse cannot without a manifestly
3: prop. 2. nu. just cause dispense in any obligation of the law divine: and
14. & 15. ubi that if he should otherwise, his dispensation would be in it
enat Reginal. selfe voyde, sinfull, and no way securing the conscience of the
Sanch. Sal. partie dispensed withall. VVhich doctrine they make evident
Valen. Tole. with many strong and perspicuous reasons (vnneccessarie to be
Vasq. Caiet. now rehearsed) and specially declare it out of holy Scripture,
Sylv. Nava. 2. Cor. 13. 10. where S. Paul tels, that Christ consigned his power unto the Prelats of the Church *non in destructionem, sed in adificationem, not for destruction, but for edification.* But who sees not, that this power would be abused for destruction, and not for edification, if on pretence of it, and without a manifestly iust cause dispensations should be granted in the law divine positive and naturall? And who is it that looks on the Confederats and their present condition with an unpartiall eye, but will conceive that there cannot be a iust cause for dispensing with them, or particulars of them in their oath of Association, or with them in their obedience due by the said Oath to the government established. First, in regard the sole cause pretended is the *Cessation* made, and observed with *Inchiquyn* which we have notwithstanding proved to have beene lawfull, necessarie, profitable, and much to the advancement of the Catholicke cause, were it obeyed by refractories, and per consequence of the glorie of God. How then could it be a iust cause for dispensing with any in the oath of Association, or in the obedience due by the said Oath to all Orders of the Supreme Councill, or all such Orders as doe not manifestly apppeare to be sinnefull? Secondly because such a dispensation breeds sedition, stirs rebellion, commenceth a Civill warre, and devides the Confederates into parties, throwes fire and bloud into their verie entrailles, and by their owne hands, finally weakens them so by these wayes of mutuall enmities and hostilities, as herèby in reason they should be thought to be exposed as a prey to the common enemy of our Religion

on (specially their disabilities when they were entire being considered) and the prime scope of their Confederacie (which is the propagation and glorie of Catholicke Religion) verie unlikely to be attained, but rather despayred of. Is there any one knowes *Ireland*, but should in reason have perswaded himselfe, that all these evils should have followed such a dispensation, if God did not prevent them by a miracle? and on miracles we are not, according the Catholicke doctrine, to relye for it is a mortall sinne to tempt God by expectation of miracles. And is there any man of sence Will say, that a dispensation which draweth along with it so much evill could either be in it selfe iust, or have a iust cause, specially where the cause pretended is the declining of a sin in adhering to a Cessation, wherein, or in which adhering we have manifestly proved no sinne could be committed: nay we have evinced the said Cessation could not be not adhered unto, or could not be reiectd by the Councell and Confederates without most grievous and fearefull sinnes: and wee have shewed this to be the constant doctrine of the Catholicke Divines, and of the Church of God, and that when the contrarie was practised through an ignorance and temeritie, the experience was fatal, and cost them deere. Thirdly by reason of the disesteeme it would bring upon all confederacie, & of the insecuritie, manifest danger, & confusion it would bring vpon, and throw into all Christian states and governments: for if by such dispensations, and upon such grounds the common subject could be withdrawne from his allegiance, and with a good conscience rebell, what Prince what state, or Republicke, nay what privat man could live one day in securitie, whereas they often see before their faces such boundlesse, enragd ambition, & such cruell designes of some Prelats: (may this be spoken without disparagement to so many other great and good Prelats, who by their vertuous lives & apostolicall doctrine support States, Kingdomes, and Monarchies of Christianitie: as in particular severall are scene to use with us at this present, such prayse worthy endeavours for the preservation of the Confederats,) If together with this example it were maintained as a Catholicke Tenet, That such Prelats or Churchmen could at their pleasure or upon such designes challenge, & assume a power of the fortunes, estates, Crownes,

*S. Tho. 2. al.
Sanct. Leffi.
Suar. Tolos.
Caier. & alij
quos citat &
sequitur Bon.
nac. tract. de
Decalog. d. 3.
q. 9. pm. unic.
prop. 3. nm. 4.
& 5.*

Crownes, lives of Kings and Republicks by dispensing with particulars, or promiscuously with the multitude or any other in their due obedience and oathes of allegiance, what should not be hourly feared? Lastly (which is hence consequent) by reason of the aversion and hatred it would breed in all Infidels and sectaries against our Religion. For what Prince, State, or Common-wealth of any other Religion would admit of ours, if our doctrine of dispensations in the subjects allegiance were so destructive of all policie and good government, and so cruelly wicked? Let us therefore here and evermore stop our Christian eares from such blasphemies against the law of God and the faith of the holy Roman and universall Church in all ages to this present time. And let us leave such antichristian principles to *Luther, Calvin*, & such other infernall furies, who covered a great part of Europe with the blood of Christians, by doctrine in substance not unlike this (but certainly no worse then this) and whereby they at their pleasures armed the subject against the Prince, and the people against the Magistrate for the destruction of Christianitie and of the Church of God. Reade the Catholick Author who writt on Fox's Kalendar of Martyrs, where he at large rehearseth the daungerous, anarchical, and bloody principles of late Sectaries, specially of Puritans.

The seventh and last Quere answered.

AS the present proceedings of the Lord Nuncio highly entrench (with submissive reverence to his Grace we say it) on all Supreme Governours, on the law of Nations, the honour of the Confederates, and brings a scandall on our holy Mother the Catholicke Church, which contrarie to his Lordships proceedings teacheth and warranteth promises, leagues, contracts, Cessations, and peace made with hereticks to be religiously performed (as we have seene in the second supposition made in our answer to the first *Quere*, and in the authors there cited) and teacheth (as we have seene before) that all subjects both Laicks, and Ecclesiasticks Priests, Fryers, Jesuits, Bishops, Archbishops, Patriarchs, Cardinals are bound under mortall sin, and eternall damnation to obey all Orders of the Civill

Civill Magistrate, wherein evill and sinne doth not manifestly appeare (which we have sufficiently proved, not to appeare in their orders concerning this great difference): so it must follow that none of either state, Temporall or Ecclesiasticall may without shipwracke of his conscience and losse of his soule, disobey the Orders of the Supreme Councell, on sole pretence of the present proceedings of the Lord Nuncio, these proceedings being now declared by strong and insoluble reasons, to be uniuersall, illegall, invalid, sinfull, commanding and enforcing to most enormous and execrable sinnes of infidelitie, perjurie, rebellion, treason, and to so many other abominable crimes which streame out of these evill sources.

VVhence is apparant, how unsatisfactorie and ignorant their answer is, who to excuse their disobedience to the Councell, allege the commaunds of their spirituall Superiours, Guardians, Pryors, Provincials, Bishops, the Lord Nuncio, &c. to the contrarie: as if such commaunds or of such superiours, or of any else whosoever, temporall or spirituall were of more force to oblige their consciences then the commaundements of God, and then his law, which (according the Declaration made thereof unto us by *S. Paul* the Apostle, Rom. 13. and by the doctrine of the Church of God, the holy Fathers, and Catholicke Doctours in all ages) on paine of eternall damnation enjoyne both them and all such their Superiours whatsoever (either of the Secular or Regular Clergie) to obey the Councell in all matters where manifest sin doth not appeare. And that sinne doth not appeare in any the commaunds of the Councell concerning the faithfull observation of this agreement made with *Inchiquyn*, (yea notwithstanding any Censures of the Lord Nuncio) we have more then sufficiently manifested, and they who make this ignorant answer confesse (in regard it could not be hitherto found, what article or part of the Cessation might be with reason maintained to be sinfull) as by their flying to this straight they are constrained. Otherwise certainly if they could shew any evill or sinne therein, they would rather make use of so reasonable an excuse for their opposing the Decrees of the Councell, then of so bad a pretext as blind obedience to the commaunds of Superiours who are as they obliged by the law of God to be wholly

wholly subject to the Councell for what concernes the peace and tranquillitie of the Common-wealth. Wherefore what they call obedience to their Superiours, is no true nor vertuous obedience, but vitious, but sinfull, but against their conscience, but damnation to their soules (as the Apostle hath) because it implyes plaine disobedience to and transgression of the Commaunds of God, who must be obeyed before all men of the earth. Will any even of themselves denie, but their obedience to the commaunds of their Superiours enjoyning them *rapine, theft, murder, adultery, sacrilege, &c. or enjoyning them never to confesse their sins, never to pray, never to doe an act of charitie, &c.* would be plaine disobedience to the commaunds of God, would be damnation to their soules? Or will they denie but their foolish excuse of blind obedience to their earthly Superiours injunctions, would not in this case iustifie them either before God or men? nor likewise that other senselesse evasion, *That it is not their parts to examine the Iustice of the commaunds imposed upon them by their Prelats, but simply to doe what they are bid.* Will not they also confesse, if wee reason with them a little further, that it is therefore they should not obey, and ~~these~~ excuses would not serve them in such a case, because such commaunds would be against the law of God?

* Concil. Tol. x. c. 2. *Si quis religioforum, ab Episcopo usque ad extremi ordinis Clericum, sive Monachum, generalia iuramenta in salutem Regiam, gentisque, aut patrie data, reperiatur violasse voluntate profana, mox propria dignitate privatus, & loco & honore habetur exclusus.*

And will not they admit their knowledge hereof to be derived hence, that they see it so expressed in Scriptures, Fathers, Doctours of the Catholicke Roman Church in all ages (let it be now supposed that their Superiours should tell them the contrarie in the same case?) How therefore doe they on such mad pretences obey the commaunds of their Superiours enjoyning them to substraet civill obedience from the Supreme civill power in a matter concerning the peace & tranquillitie of the common-wealth, and in a matter wherein their Superiours cannot shew, nor themselves can see any evil implied? Doe not they see, it is against the expresse Law of God to substraet obedience from the Civill power in this case? Do not the Scriptures, Councells*, Fathers, Doctours, the practise of the Church of Christ in all ages proclayme it? They cannot be ignorant hereof: and if any of them hath beene hetherto, certainly their ignorance can be no longer invincible, that is such as might not be overcome by humane industrie

stric ; nor probable, that is, which hath probable reasons to
 maintayne their disobedience to the Councell. For what rea-
 sons can be probable against the plaine sence of holy Scrip-
 tures, and the unanimous consent of the holy Fathers and
 Doctors of the Catholicke Church in all ages? As for affected
 ignorance, grosse, vincible, or improbable, none of them ex-
 cuse from damnation, according the sence of all Catholicke
 writers. But alas, ignorance is not the cause of sinfull obstina-
 cie. Malice and a naturall inclination occasioneth it in verie
 many, a rash engagement in others, hopes of preferment to
 Benefices, and Superioritie in others, in others a stupid feare
 of loosing what they had, being perswaded by experience of
 the former revolution, that an Excommunication the most
 uniuersall would alter the whole frame of government, and that
 there should be no living in Ireland for any would oppose the
 Lord Nuncio's designe herein, or the power of Owen O' Neyll.
 Behold the true causes of their obstinacie, and no sence of
 conscience. Behold the reason, why even the best and most
 learned amongst them, being demanded the ground of their
 opposition, do say commonly, *That they will neither give reason,
 nor take reason,* and when they speake their minds at full, doe
 now at last, onely censure the intention which the Councell
 and their adherents had in concluding the Cessation, because
 they finde no other cause, and yet would seeme not without
 some cause to reiect it, which they are engaged so many un-
 worthy causes to oppose. But who sees not in our answers to the
 first and second *Quere*, the false imposture of this last refuge?
 Yet by reason they make hereof more use then of any other,
 we briefly propose the ensuing considerations. First, that the
 Declaration and Censures of the Lord Nuncio, Congregation,
 and Delegates (in obedience to, which they disobey the
 Councell) were not against such evill intentions, but against
 the verie substance of the articles of Cessation, as in them-
 selves evill & unconscionable. Tis manifest to any that please
 to reade and peruse the Tenour of both Decrees, which con-
 tayne not a word importing other sence, and therefore can-
 not be extended to evill intentions (though we granted such
 intentions to had beene) in regard a penall Decree or law is
 to be restrained, not extended, according the maxime of Ca-
 nonists.

*Beatus in
 Sum. Theol.
 de Bonit. ult.
 int. c. 4. q. 7.
 con. 4. & alij
 apud ipsum.*

**In others, an
 apprehension of
 shame and dis-
 grace, in reclay-
 ming an error,
 & falling from
 the way they
 once resolved
 on.*

for

*Bon. tract. de
 Legib. disp. 1.*

q. 1. punct. 8.
prop. 2. & alij
apud ipsum
ibid.

nonists. Wherefore this recourse of theirs to evill intentions, and their not shewing any other evill in the object, that is in the Cessation it selfe, or in the conclusion and observation of it, concludes an errour in the Decree or sentence of Excommunication, and consequently disanuls it, and leaves them no reasonable pretence for disobeying the Councell. since their pretence is the supposed obligation of the Censures which even their owne answer takes away. The second is: Though it were granted that the Councell or others who negociated th' affaire of Cessation, had such intentions at first, or upon the perfection of it, yet might they have changed such evill intentions into good, during the nine daies given in the monitorie Decree for deliberation: and consequently if there be no other evill but of their intentions, how could the Nuncio proceede to execute his Censures since they protested in their appeale before the ninth day, and in other Printed Declarations, that they had no such intention? Nay how could he proceede to this execution, though they never had made any such exteriour protestation, whereas without it, they might have taken away the ground of the excommunication, to wit the supposed evill intentions? The third, that questionlesse our Opposits will not denie, but those hands are of the Confederats who desired and embraced the Cessation, not out of any such evill intention, but for a iust end and for their owne preservation. How then could such be excommunicated, since the ground of this excommunication, to wit evill intention, is not found in them? And if these be not excommunicated, is it not plaine that none is excommunicated whose conscience tels him, that he did not adhere to the Cessation with any evill intention? How then doth the Nuncio proceede indifferently against them all as excommunicated persons? Nay how can he proceede against any of them as such, but onely against him or them whose naughty intentions are apparant? and whose intentions can be apparant to him, but either out of confession, or secundum allegata & probata by exteriour proofes? (for God alone is Iudge of the interior, not the Church) And who is it that was so convicted, or confessed before him such intentions? Nay who is it was summon'd to his tribunall for such a businesse. The fourth consideration is of the strong motives and morall certainties

tainties produced before (in our answer to the second *Quere*) and which we may have to persuade us, that the Supream Councell (who are chiefly aymed at in this businesse) had no such evill intentions. VVhich, together with all hetherto said, being duely pondered by them who now seeme so adverse to us in opinion, but by them discharged a little of passion, retyring into their soules, and looking with an eye of indifferencie upon this difference, we doubt not but they will acknowledge before God, the truth of our assertions, and with how little reason, but great hazard of eternall salvation they disobey the commaunds of the Supreme Councell on pretence of the present proceedings of the Lord Nuncio; and we hope, as we most heartily desire with all our soules, that they, or at least such of them as have an affection to loyaltrie, and a true zeale of Gods cause, will by their unfayned and repentant submission to the Supreme Authoritie, established by the Kingdome, make happy these Answers, (labour'd as the shortnesse of time did permit) for their conversion, and satisfaction of all good Patriots, by

David Bishop of Ossorie

F. John Roe, Provinciall of the excal. Carmelits.

Nicholas Taylour, Doctor of Divinity.

VVilliam Shergoll, Professor of Divinitie, Prebend of Houth, and Vic. For. of Fingal.

Fr. John Barnwall Lectour of Divinitie.

Fa-Symon VVaser, Lectour of Divinitie.

F. Peter VV alsh, Lectour of Divinity.

Luke Cowley Arch-deacon of Ossory, and Protonotary Apostolicke.

Laurence Archbold, Vic. For. in the Deanries of Brea, Tavnay, and Glandalagh.

F. Christopher Plunket, Guardian of Saint Francis Convent in Dublin.

Fa. John Dormer Guardian of Saint Francis Order at Gallesdermot.

Fr. Bonaventure fitz Gerald Guardian of Saint Francis Order in Kildare.

F. Lawrence Matthews, Preses of Carmel. Kilken.

*Paul Nash Prebend
John Shee Prebend of Main.
James Sedgrave.*

